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CASES IN LAW:

WHEREIN

Justices of Peace have a Jurisdiction, as well by their Commission, as by Act of Parliament, which have received a Determination by the Judges in *Westminster Hall*, their Circuits, and in *Serjeants Inn*, from *Edward the Third's Time* to this Day:

As they are reported in the Year-Books, and all the other Reports down to this Time.

WITH

The Addition of, some Modern CASES,
not yet reported in any Book.

BEING

The Second Part of the *Justice of
Peace's Companion*.

By Samuel Blackerby, of *Grays Inn*, Esq;

In the SAVOT,

Printed by Eliz. Nutt, (Executrix of J. Nutt,
Assignee of Edward Sayer, Esq;) for J. Walthoe
in the *Middle-Temple-Cloysters*; and J. Walthoe
jun. against the *Royal-Exchange* in *Cornhill*, 1717.



T H E

Introduction.

THE Design of the following Sheets is not to go through the whole Office of a Justice of Peace, which would be as impertinent in me, as vain and unprofitable in itself, after the same has been done so learnedly by *Fitz-Herbert*, *Crompton*, *Lambard* and *Dalton*, nor is it to fill it with Precedents borrowed from others, or composed by my self, to swell it to an extravagant Bulk; nor to determine dogmatically the Time when Justices of Peace began; nor shall I say more of this last, than that I don't find that any of our Law-Books do affirm

A 2 them

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them to have been before the Reign of *Edward* the Third: But what I intend is, by Law-Books and Records, to shew what Determinations have been made concerning the Power and Authority the Justices of Peace have, and wherein they have duly pursued that Power, and wherein they have not; which may be an Encouragement in the former, and a Rule to guide them for the future in the latter. And to set the Matter in a clearer Light, I doubt not but it will be granted me, that it is absolutely necessary to set forth the Commission of the Justices of Peace at this Day, which take in the Words following, *viz.*

The Commission for Justices of the Peace.

‘ **G** EORGE, by the Grace of God,
 ‘ King of Great Britain, &c. to
 ‘ A. B. C. D. Know ye that we have
 ‘ assigned you and every one of you,
 ‘ jointly and severally, our Justices to
 ‘ keep

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' keep our Peace in the County of *Cam-*
' *bridge*, and to keep and cause to be
' kept all Ordinances and Statutes made
' for the good of the Peace, and for the
' Conservation of the same, and for
' the Quiet, Rule and Government of
' our People, in all and every the Ar-
' ticles thereof, in our said County,
' (as well within the Liberties as with-
' out) according to the Force, Form and
' Effect of the same; and to chastise
' and punish all Persons offending a-
' gainst the Form of those Ordinances
' or Statutes, or any of them, in the
' County aforesaid, as according to
' the Form of those Ordinances and
' Statutes, shall be fit to be done: And
' to cause to come before you or any
' of you, all those Persons who shall
' threaten any of the People in their
' Person, or in burning their Houses,
' to find sufficient Security for the
' Peace, or for the Good Behaviour to-
' wards us, and the People; and if
' they shall refuse to find such Securi-
' ty, then to cause them to be kept
' safe in Prison, until they find such Se-
' curity. We have also assign'd you, and
' every two or more of you, (where-
' of any of you the said *A. B. C. D.*
A 3 'shall

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'shall be one) our Justices to enquire
 'by the Oath of good and lawful Men
 'of our County aforesaid, by whom
 'the Truth may be better known, of
 'all and all manner of Felonies, Witch-
 'crafts, Inchantments, Sorceries, Ma-
 'gick Arts, Trespasses, Forestallings,
 'Regratings, Ingrossings, and Extorti-
 'ons whatsoever, and of all and sin-
 'gular other Misdeeds and Offences, of
 'which Justices of the Peace may or
 'ought lawfully to enquire, by whom-
 'soever or howsoever done or perpe-
 'trated, which hereafter shall happen
 'howsoever to be done or attempted
 'in the County aforesaid; and of all
 'those who in the County aforesaid
 'have either gone or ridden, or here-
 'after shall presume to go or ride in
 'Companies with armed Force against
 'the Peace, to the Disturbance of the
 'People; and also of all those who in
 'like manner have lain in wait, or
 'hereafter shall presume to lie in wait:
 'and also of Innholders, and of all
 'and singular other Persons who have
 'offended or attempted, or hereafter
 'shall presume to offend, or attempt
 'in the abuse of Weights or Mea-
 'sures, or in the Sale of Victuals a-
 'gainst

gainst the Form of the Ordinances or Statutes, or any of them, in that behalf made for the Common Good of *England*, and the People thereof, in the County aforesaid; and also of all Sheriffs, Bailiffs, Stewards, Constables, Gaolers and other Officers whatsoever, who in the Execution of their Offices about the Premisses, or any of them, have unlawfully demean'd themselves, or hereafter shall presume unlawfully to demean themselves, or have been, or hereafter shall be, careless, remiss, or negligent in the County aforesaid; and of all and singular Articles and Circumstances, and all other Things whatsoever, by whomsoever and howsoever done or perpetrated in the County aforesaid, or which hereafter shall happen to be howsoever done or attempted in any wise, more fully concerning the Truth of the Premisses, or any of them; and to inspect all Indictments whatsoever so before you, or any of you, taken or to be taken, or made or taken before others, late Justices of the Peace in the County aforesaid, and not as yet determined; and to make and continue the Process thereupon against all and singular the Persons so indicted, or

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which hereafter shall happen to be
 indicted before you, until they be ap-
 prehended, render themselves, or be
 outlawed. And to hear and determine
 all and singular the Felonies, Witch-
 crafts, Inchantments, Sorceries, Ma-
 gick Arts, Trespases, Forestallings, Re-
 gratings, Ingrossings, Extortions, un-
 lawful Assemblies, Indictments afore-
 said, and all and singular other the
 Premisses, according to the Laws and
 Statutes of *England*, as in like Case
 hath been used or ought to be done:
 And to chastise and punish the said
 Persons offending, and every of them,
 for their Offences, by Fines, Ransoms,
 Amerciaments, Forfeitures, or other-
 wise, as ought and hath been used
 to be done, according to the Laws and
 Customs of *England*, or the Form of
 the Ordinances and Statutes aforesaid.
 Provided always, that if a Case of
 Difficulty upon the Determination of
 any of the Premisses shall happen to
 arise before you, or any two,
 or more of you, then you or any
 two or more of you do proceed to
 give Judgment therein, except it be
 in the Presence of one of the Justi-
 ces of the one or other Bench, or Ju-
 stices

‘stices of Assize in the County aforesaid
‘said. And therefore we comma-
‘you, and every of you, that you di-
‘ligently intend the keeping of the
‘Peace, Ordinances, Statutes, and all
‘and singular other the Premises; and
‘at certain Days and Places, which you,
‘or any such two or more of you as
‘is aforesaid, shall in that Behalf ap-
‘point, you make inquiry upon the
‘Premises, and hear and determine all
‘and singular the Premises, and per-
‘form and fulfill the same in Form a-
‘foresaid, doing therein that which to
‘Justice appertaineth, according to the
‘Law and Custom of *England*, saving
‘to us the Amerciaments and other
‘Things to us thereof belonging. And
‘we Command, by Vertue of these
‘Presents, the Sheriff of the said
‘County of *Cambridge*, that at certain
‘Days and Places which you, or any
‘such two or more of you, as afore-
‘said, shall make known to him as afore-
‘said, he cause to come before you, or
‘such two or more of you as aforesaid,
‘such and as many good and lawful
‘Men of his Bailiwick (as well with-
‘in Liberties as without) by whom
‘the Truth in the Premises may be
‘the

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the better known and inquired of.
 Lastly, we have assigned you the said
 E. H. Keeper of the Rolls in the said
 County, and therefore you shall
 cause to be brought before your self
 and your said Fellows, at the said
 Days and Places, the Writs, Pre-
 cepts, Processes and Indictments afore-
 said, that the same may be inspected,
 and by a due Course determined, as
 aforesaid. *In Witness whereof, &c.*

I should also have added the Acts
 of Parliament, which authorize the
 Justices of the Peace to act; but that
 I have done already in my Summary,
 to which I refer the Reader.

It is indeed not to be presumed,
 but all Gentlemen who have the Ho-
 nour to serve his Majesty in the Com-
 mission of the Peace at this Time,
 are Men of great Knowledge, sound
 Learning, and profound Sagacity,
 such who are undoubted in their Loy-
 alty to the King's most Excellent Maje-
 sty, and pious and godly Men, who are
 tender of keeping their Oath, and very
 fearful of breaking it, who stand al-
 ways ready to discharge their Duty:
 So that the inserting the Oath of a
 Justice

Justice of Peace, and the Statute of 4 H. 7. cap. 12. That all Justices of Peace shall execute their Commission, redress Injuries, and maintain the Laws, may at this Time seem needless; yet since no Body knows, but there may come a Time, when Men otherwise qualified may get into the Commission of the Peace, and some may be put into Commission, who are perhaps willing to be informed, yet have no Time to read large Volumes, (and indeed for these latter this Treatise is chiefly intended) it may not be amiss to add as an Introduction to what follows, the Oath of a Justice of Peace, and also the said Act of Parliament.

The OATH of a Justice of Peace.

YOU shall swear, that as a Justice of Peace in the County of Cambridge, in all the Articles in the King's Commission to you directed, you shall do equal Right to the Poor and to the Rich, after your Cunning, Wit, and Power, and after the Laws and Customs of the Realm, and Statutes thereof made; and you shall not be of Counsel of any Quarrel hanging
be-

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before you, and that you hold your Sessions after the Form of the Statutes thereof made; and the Issues, Fines and Amerciaments that shall happen to be made, and all Forfeitures which shall fall before you, you shall cause to be entered without any Concealment (or Imbezilling) and truly send them to the King's Exchequer: You shall not let for Gift or other Cause, but well and truly you shall do your Office in that behalf, and that you take nothing for your Office of Justice of the Peace to be done; but of the King, and Fees accustom'd, and Costs limited by the Statute: And you shall not direct, nor cause to be directed, any Warrant (by you to be made) to the Parties, but you shall direct them to the Bailiffs of the said County, or other the King's Officers, or Ministers, or other indifferent Persons, to do execution thereof,

So help you God, &c.

The Statute of 4 H. 7. Cap. 12.

‘ **T**HE King our Sovereign Lord
 ‘ considereth, That by the Neg-
 ‘ ligence, Misdemeaning, Favour, and
 ‘ other inordinate Causes of Justices
 ‘ of Peace in every Shire of this his

Realme

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Realm, the Laws and Ordinances made for the politick Weal, Peace, and good Rule of the same, and for the Profit, Surety, and restful Living of his Subjects of the same, be not duly executed according to the Tenor and Effect that they were made and ordained for: Wherefore his Subjects have been grievously hurt, and out of Surety of their Bodies and Goods to his great Displeasure; for to him is nothing more joyous, than to know his Subjects to live peaceably under his Laws, and to encrease in Wealth and Prosperity, and to avoid such Enormities and Injuries, so that his said Subjects may live restfully under his Peace and Laws, to their Encrease. He Will that it be ordained and enacted by Authority of this said Parliament, That every Justice of Peace within every Shire of this Realm, within the Shire where he is Justice of Peace, do cause openly and solemnly to be proclaimed Yearly, four Times a Year, in four principal Sessions, the Tenor of this Proclamation to this Bill annexed: And that every Justice of Peace being present at any of the said Sessions, if they

Every Justice of Peace shall cause this Proclamation to be made four Times a Year.

‘ they cause not the said Proclamation
 ‘ for to be made in Form abovesaid,
 ‘ shall forfeit unto our Sovereign Lord
 ‘ at every Time twenty Shillings.

2. *Henricus Dei gratia, &c.* The King, our Sovereign Lord, considereth, how daily within this Realm his Coin is traiterously counterfeited, Murders, Robberies, Felonies, been grievously committed and done; and also unlawful Retainers, Idleness, unlawful Plays, Extortions, Misdemeanors of Sheriffs, Escheators, and many other Enormities and unlawful Deemeanings daily grow more and more within this Realm, to the great Displeasure of God, Hurt and Impoverishing of his Subjects, and to the Subversion of the Polity and good Government of this his Realm; for by these said Enormities and Mischief his Peace is broken, his Subjects troubled, inquieted and impoverished, the Husbandry of this Land decayed, whereby the Church of England is upholden, the Service of God continued, every Man thereby hath his Sustainance, every Inheritor his Rent for his Land; for repressing and avoiding of the said Mischiefs, sufficient Law

The Benefit
 of Husbandry.

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and Ordinances been made by Authority of many and divers Parliaments holden within this Realm, to the great Costs of the King, his Lords and Commons of the same, and lacketh nothing, but that the said Laws be not put in due Execution, which Laws ought to be put in due Execution by the Justices of Peace of every Shire of this Realm, to whom his Grace hath put and given full Authority so to do, sith the Beginning of his Reign. And now it is come to his Knowledge, that his Subjects be little eased of the said Mischiefs by the said Justices, but by many of them rather hurt than helped; And if his Subjects complain to those Justices of Peace, of any Wrongs done to them, they have thereby no Remedy, and the said Mischiefs do increase, and be not subdued. And his Grace considereth, that a great Part of the wealth and prosperity of this Land standeth in that, that his Subjects may live in Surety under his Peace, in their Bodies and Goods; and that the Husbandry of this Land may increase and be upholden, which must be had by due Execution of the said Laws

The slackness of Justices of Peace in the due Execution of the Laws.

The Justices of Peace must execute their Commission and the Laws.

Hinderers of Justices of Peace to execute their Authority.

Each Person grieved shall make his Complaint to the Justices of Peace.

Laws and Ordinances; Chargeth and Commandeth the Justices of the Peate of this his Shire to endeavour them, to do and execute the Tenor of their Commission, and the said Laws and Ordinances ordained for the subduing of the Premises, as they will stand in the Law and Favour of his Grace, and in avoiding of the Pains that be ordained, if they do the contrary. And moreover he Chargeth and Commandeth that every Man, what Degree or Condition that he be of, that let them in Word or Deed, to execute their said Authority in any manner or form abovesaid, that they shew it to his Grace; and if they do it not, and it come to his Knowledge by other than by them, they shall not be in his Favour, but taken as Men out of Credence, and be put out of Commission for ever. And over this he Chargeth and Commandeth all manner of Men, as well the poor as the rich, (which be to him all one in due Ministration of Justice) that is hurt or grieved in any thing that the said Justices of Peace may hear, determine, or execute in any wise, that he so grieved make his Complaint

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plaint to the Justice of Peace that next dwelleth to him, or to any of his Fellows, and desire a Remedy. And if then he hath no Remedy, if it be nigh such Time as his Justices of Assize come into that Shire, that then he so grieved shew his Complaint to the same Justices, and if then he have no remedy, or if the Complaint be made long afore the coming of the Justices of Assize, then he so grieved come to the King's Highness, or to his Chancellor for the Time being, and shew his Grief: And his said Highness then shall send for the said Justice to know the Cause why his said Subjects be not eased, and his Laws executed; whereupon, if he find any of them in Default of executing of his Laws in the Premises, according to his Highness's Commandment, he shall do him so offending to put out of the Commission, and farther to be punished according to his Demerit. And over, that his said Highness shall not let for any Favour, Affection, Cost, Charge, nor other Cause, but that he shall set his Laws to have plain and true Execution, and his Subjects to live in Surety of their Lands, Bodies and

And if he hath no Remedy, to the Justice of Assize, and then to the King or his Chancellor. /

The punishment of a Justice of Peace omitting his Duty.

and Goods, according to his said Laws, and the said Mischiefs to be avoided, that his Subjects may increase in Wealth and Prosperity to the Pleasure of God.

Now, by what is above recited, (*viz.* the said Oath and Statute) no thing can be more evident than that every Justice of Peace is under the Obligation of discharging his Duty, upon the Penalty of Perjury; and not only so, but also of being put out of Commission, and further punish'd according to his Demerits: Both which deserve to be seriously read over, and that not seldom, and to be thoroughly weighed and considered by every Gentleman, who intends faithfully to discharge his Duty in this Office.

And it is to be observed, Justices of Peace cannot meddle with any Thing but such as the Statutes empower them; for they have their whole Power by the Statutes, and no Authority by the Common Law. *Vide* 1 Jones 170. 1 Sid. 292. St. 1 Ed. 3. c. 16. 4 Ed. 3. c. 2. 34 Ed. 3. c. 1. 36 Ed. 3. c. 12.

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Besides, inferior Courts cannot take Authority by Statute, unless they are particularly named; but superior Courts shall, unless prohibited or restrained by Negative Words. *Savile's Rep.* p. 134. *Pl* 212.

Touching the general Authority of Justices of Peace. *Vide Co. Li.* 8, 127, *Li.* 9. 118. *Li.* 11, 65. *Li.* 12, 32. *Cro. Car.* 112. And see the difference between Commissions of *Oyer* and *Terminer*, Gaol Delivery, and of the Peace. *1 And. Rep.* p. 111, 112. *Noy* 174, 177.

S. B.

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Butler, inferior Courts cannot take
Authority by Statute, unless they
be particularly named; but inferior
Courts shall unless prohibited or re-
strained by Negative Words. See
100. 1. 127. 14. 113.
Touching the general Authority of
Judicial Power. See 1. 127.
1. 127. 128. 129. 130. 131. 132. 133.
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CASES

CASES IN LAW,

WHEREIN
JUSTICES of PEACE have a
Jurisdiction, as well by their Commis-
sions as by Act of Parliament, which have
received a Determination by the JUDGES
in *Westminster-Hall*, their Circuits, and in
Serjeant's-Inn, from *Ed. 3d's* Time to this
Day, as they are reported in the Year-
Books, and all the other Reports down
to this time.

Accessory and Principal.

A. Is present, and moves *B.* to
strike *C.* and kill him; in this
Case *A.* is Principal, tho' he
did not strike one Stroke. *Term.*

Mich. 4 H. 7. f. 101. a. Pl. 10. Term. Mich.

13 H. 7. f. 10. a. Pl. 7. Plow. Com. f. 100. a.

1 Mar.

When divers meet to do an unlawful
Act, and one alone doth it, and the others
B **pre-**

34 H. 8. B. 2.

New Cases. f.

54. a. Pl. 237.

Accessory and Principal.

Term. Mich. present abet it, and are ready to assist him
 11 H. 4. f. 13. in doing it, they are all Principals. *Term.*
 b. 14. a. Pl. *Pasch.* 2 H. 8. *Kellw. Rep. f.* 161. a. Pl. 2.
 30. in Rape. *Plow. Com.* 1 Mar. 98. a. But it is otherwise,
 1 Mar. *Plow.* if a Man comes there by chance, and not
Com. p. 97. a. with an Intent to join in doing an unlawful
 b. in Murder. Act, *Term. Trin.* 14 H. 7. f. 31. b. Pl. 7.

P. and another set upon two to rob them,
 one runs one way, and the other another;
 the Companion of P. robs one of the Persons
 set upon, out of the sight and hearing of P.
 yet P. is Principal. 1 *And. p.* 116. Pl. 161.
Hil. 26. El. 2.

Archer in *Saunders* his Reports, Title *Mur-*
der, was not Accessary; which see. The Rea-

Vide *Kelynge*
 52 & 53.
 H. P. C. p.
 53. New Dal-
 ton, p. 348.

son there given is, That *Archer* never per-
 swaded nor gave his Counsel to poison the
 Child; and therefore the Law will not car-
 ry his Consent further than he intended it.

If one doth receive a Felon (before he is
 attainted of Felony) knowing of the Felo-
 ny, or favours him with Money, Meat,
 Drink or Lodging, he is Accessary: But not
 for giving him his good Word, suing for his
 Deliverance, or sending a Letter for his En-
 largement. 26 *Ed.* 3. *Lib. Affiz.* Pl. 45.

An Adulterer counsel'd a Woman to kill the
 Infant when it should be born: The Infant
 was born and murdered by the Midwife, in
 the presence, and by the commandment of
 the Woman. The Woman and Midwife were
 adjudged Principals, and the Adulterer Ac-
 cessary, because the Counsel, before the Birth,
 not being countermanded, continued after
 it. *Term. Mich.* 2 & 3 *Eliz.* *Dyer* 186. a. b.
 Pl. 2. One

Accessory and Principal.

12

One Man kills another, and two others are only present, and abetting the Person who did the Fact, and were guilty of no Action towards the Death of the Party. All three indicted upon 1 *Jac.* 1. *Cap.* 8. against Stabbing. The two are but Accessories, for that being a Penal Law, is to be taken strictly, and not extended by Equity. *Hill. Term.* 23 *Car.* 1. *Stel.* 7 *Rep.* 86. The King against *Page* and *Harwood*.

The Lord *Sanchar* at *Westminster* procured *R. C.* to kill *J. T.* who took with him one *J. J.* and killed *J. T.* in *London*. In this Case the Lord *Sanchar* was but Accessary. *Trin. Term.* 10 *Jac.* 1. *Co. Rep.* 9. f. 117. 2. Lord *Sanchar's* Case..

Vide Title 7
Trial in new
Cases.

If one receives stoln Goods, that would not have made him Accessary to the Felony, unless he receiv'd the Felon. But if he received the stoln Goods and the Felon, then he should be Accessary. 27 *Ed.* 3. *Lib. Affiz.* Pl. 69. *Term. Mich.* 9 *H.* 4. 1. Pl. 3. But since that the Law is alter'd. *Vide Stat.* 3 & 4 *W. & M. ca.* 9. Persons buying or receiving stoln Goods, knowing them to be stoln, shall be accessory to the Felony after the Fact.

If the Principal be convict of Felony, stand mute, or challenge above 20 Jurors, the Accessary may be proceeded against, notwithstanding such Principal be admitted to his Clergy, pardoned, or otherwise delivered, before attainder, 2 *Stat.* 1 *Ann.* ca. 9. *Vide H. P. C.* 221.

B 2

Buyers

Accessary and Principal.

Buyers and Receivers of stoln Goods, knowingly, may be prosecuted for a Misdemeanour before the Principal be convicted, which shall exempt them from being punished as Accessary, when Principal is convicted, *Stat. 1 Ann. ca. 9.*

If any Person shall receive or buy knowingly any stoln Goods, or knowingly harbour or conceal Felons, he shall be taken as Accessary to the Felony, and being convicted shall suffer Death as a Felon. *Stat. 5 Ann. ca. 31.*

If principal Felon cannot be taken, so as to be convicted, yet the Person buying or receiving knowingly may be prosecuted for a Misdemeanour, to be punished by Fine and Imprisonment, or other corporal Punishment, as the Court shall think fit, which shall except the Offender from being punished as Accessary, if the Principal be after convicted. *Stat. 5 Ann. ca. 31.*

A. kills *B.* and flies to a Friend's House, who shuts the Door against those who pursue *A.* whereby *A.* escapeth. The Friend was adjudged Accessary. *Vide Ed. 2. Fitz. Abr. Tit. Coron. N^o 427.*

A Man may be Accessary to an Accessary: As if one does relieve him who is Accessary to a Felony knowingly, by this Means he himself shall be Accessary to this Accessary. *26 Ed. 6. Lib. Assiz. Pl. 52.* And if the Law was so before the Stat. of *1 Ann. c. 9. & 5 Ann. c. 31.* it seems to be much more strong, that it should be so now.

Accessory and Principal.

5

Where a Man takes a Woman against her Co. 12. p. 21.
Will, within the meaning of the Statute 3 H. S. P.

7. ca. 2. tho' the Receivers of the Woman are Principals, yet the Receivers of those who took the Woman are but Accessories. *Term. Trin. 10 Jac. Co. Rep. 12. p. 100. Baker and Hall's Case in the Star-Chamber. Co. 3. Inst. p. 61.* And those Accessories shall have benefit of Clergy, because it is after the Fact, for that Statute of 33 Eliz. 2. ca. 9, takes away the benefit of Clergy from Principals, Aiders and Abettors, before the Fact only. *Vide the Statute.*

If one be acquitted as Principal, he is acquitted as Accessary before the Fact, but not after. 27 Ed. 3. *Lib. Affix. Pl. 10. Term. Hill. 8 H. 5. f. 23. a. Pl. 26.*

There cannot be an Accessary before the the Fact in Manslaughter, for that follows a sudden Assault or Affray; if it be premeditate it is Murder: But there may in Manslaughter be Accessories after the Fact, in *Bibitbe's Case*, reported in *Co. Rep. lib. 4. f. 43. b.* as resolved. *Term. Pasch. 39 Eliz. 2.* The same Case, reported in *Mo. Rep. p. 461. p. 645. a. in Hill. Term. 35 Eliz. 2. and 1 Cro. El. 2. p. 540. the Pl. 4.* And same Year and Term, where the Principal is convicted by Verdict, and hath his Clergy, or confesseth the Felony, and hath his Pardon, the Accessary is discharged, *Term. Trin. 7 H. 4. f. 16. a. Pl. 5. Term. Hill. 3 H. 7. f. 16. Pl. 3. Term. Pasch. 39 Eliz. 2. Bibitbe's Case, Rep. Co. 4. f. 43. 6. and Term. Hill. 39 El. 2. 62 El. 2. p. 54. Pl. 4. the same Case.*

Otherwise if the Pardon comes after Judgment, then the Accessary is not discharged. *Term. Mich. 3 H. 7. f. 12. b. b. Pl. 10. Term. Mich. 13 Ed. If 4. f. 36. Pl. 6.*

Accessory and Principal.

If the Principal be attainted of Murder, and then dieth, and the Justices, before whom the Accessary is sued, have the Record of the Attainder before them, they may proceed against the Accessary, else not. *Term. Mich. 7 H. 4. f. 27. a. b. Pl. 4.*

If the Principal be dead in Prison before Attainder, or attainted of another Felony, the Accessary is acquit. *Vide Hill. Term. 12 Ed. 2. Fitz. Abr. Tit. Coron. No 378.* A Man may be Accessary to the stealing of his own Goods: As if he confederate with another to steal Goods from his Bailiff, to the Intent to charge his Bailiff: This is Felony. *Goldsb. Rep. p. 186. Pl. 128.*

If J. S. be robbed, and after agrees with the Felon for Money, that he will not give Evidence against him, by which he escapes, he is Accessary to the Felony; because it is the Duty of every Man to discover Felonies. *Harris* was of this Opinion, *Term. Pasch. 3 Ed. 6.* but others against it: But held clearly, That if after the Robbery J. S. pursued the Felon, and took the Goods whereof he had been robbed; he is no Accessary, but that is a Concealment. *Moor. Rep. p. 8. Pl. 29.*

Where the Principal is acquitted of Murder, and found Guilty of Manslaughter, all the Accessories before the Fact are to be discharged, for to Manslaughter there can be no Accessories before the Fact; and the Accessories after the Fact shall answer as Accessories to Manslaughter. *Term. Hill. 39 El. 2. Moor's Rep. p. 461. Pl. 645. Gorsad's*

Case.

I

No

Accessory and Principal.

No Accessary can be in Forgery, but they are all Principals. *Term. Mich. 44 & 45 Eliz. Moor's Rep. p. 666. Pl. 913.*

None can be Accessary in Petit Larceny. *Term Pasch. 42 Eliz. 60. Eliz. p. 750. Pl. 4. Anne Lafington's Case.*

At the Sessions at the *Old Baily, London*, a Woman was indicted as Accessary after, to a Burglary committed by one *Johnson* in *Leicestershire*. *Johnson* had been tried and attainted, but procured his Pardon, which had been allowed: And now the Woman prayed, That she might be discharged: But resolved, That she must plead to the Indictments; for tho' if the Principal have either his Clergy, or be acquitted, or obtained his Pardon before Judgment, the Accessary shall not be questioned; yet if the Principal be attainted, the Accessary must answer, tho' the Principal be pardoned. *Raymond's Rep.*

p. 477.

J. R. was indicted as a Principal in a Burglary; and upon the Evidence it appeared, That he was only Accessary after the Fact, by receiving those who did it, and the Goods. Agreed for Law, That if one be indicted as Principal and acquitted, he cannot after be indicted as Accessary before the Fact: But notwithstanding such Acquittal, he may be indicted as Accessary after the Fact. And the Reason is, because he that commands or adviseth a Robbery, Burglary or Murder to be committed, is in some respect guilty of the Fact: And therefore if he be found not guilty of the Fact, being

indicted as Principal, he cannot afterwards be tried as Accessary before the Fact, because by the former Verdict he is found not to be guilty of the Fact, which extends to all Guilt before the Principal Fact committed. But an Accessary after is not guilty in any sort of committing the Fact, for it was done before he knew any thing of it; therefore if he be tried as Principal, and found not guilty, he may be after indicted as Accessary after, for that is an Offence subsequent to the committing of the Fact, and is for receiving the Felons, or after the Fact done, which is an Offence of another nature. *Kelynge's Rep. p. 25. At Newgate Sessions 14 Octob. 14 Car. 2. by Ch. Justice Bridgman and Judge Kelynge. John Roberts's Case.*

Adultery, Vide *Bastardy and Lewdness.*

Ale-Houses.

J. *W.* brought an Action of Assault, Battery and Imprisonment against a Constable, who justified the Imprisonment, by reason of a Warrant directed to him by a Justice of Peace, to take and imprison the Plaintiff for the keeping of an Ale-house, contrary to Statute 12 Febr. 5 Eliz. Where, as the Statute is 12 Febr. 5 Ed. 6. which was found specially and holden by all the Judges,

Ale-houses.

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Judges, That the mis-recital of that Act was not material; for it being a General Act, the Justices ought to take knowledge of it. And Coke, Chief Justice, said, That a Man cannot plead *Nul tiel Record* against an Act of Parliament, if the Act be General, tho' in Truth the Record be imbezilled, because every Man is privy to it. *C. B. Term. Mich. 8 Jac. 1. Godb. Rep. p. 178. Pl. 249. Jolly Woolsey's Case, Gold. Brownl. Rep. 1 p. 296. S. C.*

F. was indicted at the Sessions of the Peace in Southwark for keeping an Ale-house, and selling Ale without Licence: Which being removed into B. R. was quashed, because it did not conclude *contra formam Statuti*, and at Common Law it was no Offence, but made an Offence by the Statute of 5 & 6 Ed. 6. ca. and 3 Car. 1. ca. 3. So was the Opinion of the Court *Term. Pasch. 21 Car. 2. B. R. Saunders's Rep. 1. p. 249. Faulkner's Case. Hob. Rep. p. 2. p. 502. Pl. 79. S. C.*

B. was indicted for selling of Ale in black Pots unseal'd *contra pacem*, without concluding *contra formam Statuti*, where there is a Statute-Law, and directs the Sealing of Measures. Upon a Motion to quash the Indictment, because it concludes not *contra formam Statuti*, the Court declared, That Measures were by the Common Law, all the Statutes directed the manner of ascertaining them, and therefore the Indictment was good at Common Law. *Term. Pasch. Keb. Rep. 2. 21 Car. 2. Siderf. 1. p. 409. Pl. 1. The King* Pt. P. 477.
Pl. 7. S. C.
against

Ale-houses.

against *Burgoine, Ventris's Rep. 1. p. 13. S. C.*

By the Statute of 5 & 6 *Ed. 6.* 'tis Enacted, That no Person shall keep an Ale-house, but such who shall be admitted thereunto, and allowed in the open Sessions of the Peace, or else by two Justices of the Peace, *Quorum unus, &c.* under the Penalty of three Days Imprisonment, without Bail, and not to be discharged without giving a Recognizance, with two Sureties, to do so no more.

By *Haughton, Justice.* A Man cannot be indicted for keeping of an Ale-house without Licence; for the Statute of *Ed. 6.* is, That if any one keeps an Ale-house without Licence, he shall be committed; and therefore the Justices of Peace are to imprison him. *Term. Mich. Jac. 1. Roll. Rep. 2. p. 398. and Palmer's Rep. p. 388.*

M. was indicted for keeping of an Ale-house without a Licence. And it was objected, That it would not lie, because it was not an Offence at the Common Law, but made so by this Statute, which gives Power to the Justices of Peace, in their Sessions, to make enquiry into those Offences, by Presentment, Information or otherwise. But an Indictment is another sort of Punishment, which is not provided by this or any other Statute: Now where a Law makes an Offence, and appoints the method of Prosecution, it is to be punished according to such method, and no otherwise. Of which Opinion were Judge *Dolben* and Judge *Eyre*; and

Alien.

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and said, They never heard of an Indictment before for keeping of an unlicens'd Ale-house; and that there lies no Indictment seems to be the Judgment of the Parliament in 3 Car. 1. ca. 3. That an Indictment would not lie, because the Conviction, may be upon view by the Chief Officer within his Limits, or by the Confession of the Party, or by Oath of two Witnesses, and then the Penalty is to be levied by Distresses. But the Lord Chief Justice *Holt* said, That an Indictment being a Summary way of proceeding, is more beneficial for the Subject; and therefore it seems reasonable such a Method should be pursued. But the other two being against it, all Proceedings on the Indictment were staid. *Modern Rep. Pt. p. 144. Term. Trin. 4 W. & M. B. R. Rex & Reg. against Marriot. Shower's Rep. p. 398. S. C. Hill. 8 Will.* it was moved again, and the Indictment quash'd.

A Motion was to quash an Indictment for selling Ale on *Sunday* in time of Divine Service, because by the Statute of *Car. 2.* a summary way before two Justices was directed and quash'd accordingly. *Hill. 5 Anna Regina vers. Holmes.*

Alien.

IF an Alien come into this Kingdom, and lives under the King's Protection; as long

Apprentices.

long as he lives here, he is a Subject of this Realm, and punishable for transgressing the Laws thereof. So agreed by Chief Justice Hyde, Judge Kelynge, and Wylde Recorder at the Sessions at the Old Bailey, 7 Dec. 1664. 16 Car. 2. Kelynge's Rep. p. 38.

Apprentices.

A Bond given by an Apprentice to deliver up a just and true Accompt is not within the Clause of Stat. 5 Eliz. ca. 4. That all Indentures, Covenants, and Bargains of or for the having, taking, or keeping of any Apprentice, &c. shall be void. But agreed by all the Court that it was a good Bond, being for a collateral matter. Term. Pasch. 14 Jac. 1. Bulstr. Rep. 3. p. 179. Bennet against Belfield.

Term. Hill.

11 Jac. 1. Bul-

str. 2. p. 186,

187, 188, 189,

190, 191. S. C.

Term. Trin.

20 Car 2. B. R.

Siderf. Rep. 1.

p. 367. In a

Case between

the King and

Cellers, who was

convicted at the

Sessions in Middlesex,

and removed into B. R.

The Court were of Opinion,

That an Uphol-

sterer is a Trade.

is within Stat. 5 Eliz. ca. 4.

Levinz. Rep. 1. p.

243. S. C. Keble's Rep. pt. 1. p. 366, 378, 390, 408, 436. S. C.

An Upholsterer, not within the Statute of 5 Eliz. ca. 4. to serve seven Years Apprenticeship, because it requires no great skill to exercise it. Coke's Opinion, Term. Pasch. 12 Jac. 1. Roll. Rep. 1. The King against Follin. Altho' an Infant may voluntarily bind himself an Apprentice; and if he continue an Apprentice for seven Years, he may have the benefit to use his Trade: Yet neither at the King and Cellers, who was convicted at the Sessions in Middlesex, and removed into B. R. The Court were of Opinion, That an Upholsterer is a Trade. is within Stat. 5 Eliz. ca. 4. Levinz. Rep. 1. p. 243. S. C. Keble's Rep. pt. 1. p. 366, 378, 390, 408, 436. S. C.

the

By the Common Law, nor by any Words of Stat. 5 *Eliz. ca. 4.* a Covenant or Obligation of an Infant for his Apprenticeship shall bind him: But if he misbehave himself, the Master may correct him in his Service, or complain to a Justice of Peace to have him punished according to the Statute. Resolv'd. *Term. Hill. 5 Car. 1. Cro. Car. p. 179. Pl. 3. Gilbert versus Fletcher. Term. Pasch. 19 Jac. 1. Hutt. Rep. p. 63. Jennings versus Pittman. S: P.*

All Aliens and Denizens are obliged to serve seven Years as Apprentices within this Realm, or else they cannot use any Handicraft mentioned in the Stat. 5 *Eliz. ca. 4.* resolved, *Term. Trin. 12 Car. 1. Hutt. Rep. p. 132.*

Apprentices are not within the Statute *Eliz. cap. 4.* That if any Person retain'd, depart from his Master, &c. but only hired Servants are within that Clause, and are to have a Testimonial. *Term. Hill. 1. Car. 1. C. B. Hetley's Rep. p. 164, 165. Brown's Case.*

If a Man marries the Wife of a Tradesman, during her Widowhood, she cannot use that Trade if she had not been an Apprentice to it. *Noy's Rep. p. 5.*

At the Quarter-Sessions in *Southwark*, an Information was brought upon 5 *Eliz. c. 4.* for using the Trade of a Dyer, not having served as an Apprentice. This was removed by *Certiorari*; and the Case appeared to be, that the Defendant was a Feltmaker, and dyed his Hats, which being part of his Trade,

Apprentices.

Trade, he was acquitted. *Noy's Rep. p. 133.*
Hunter against Moon.

If the Indentures of an Apprentice in *London*, by the default of the Master, be not Inrolled within a Year, the Apprentice may sue out his Indenture, and shall be discharged; but if it be the default of the Apprentice, as if he will not come before the Chamberlain of *London* to have it done, there he shall not be discharged. *Term. Pasch. 21 Jac. 1. Roll. Rep. 2. p. 305.*

In an Indictment for the using of a Trade contrary to the Statute 5 *Eliz. ca. 4.* It was said, That to keep a Shop within a Country Village is not within the Statute, and it were very inconvenient that the Inhabitants must go to some great Town upon every Occasion. *Term. Mich. 21 Car. 2. B. R. Ventris Rep. 1. p. 51.*

Hill. 14 & 15
 Car. 2. Keble's
 Rep. 1. pt. p.
 431. Pl. 12.
 The King
 against New-
 ton, That a
 Man may be
 compelled.

It was said by the Court upon an Indictment against one for refusing to take an Apprentice, bound by the Church-wardens and Justices of Peace, according to the Statute of 42 *Eliz. ca. 2.* That in such a Case a Man cannot be compelled to accept an Apprentice. *Term. Hill. 29 & 30 Car. 2. B. R. Ventris Rep. p. 325.*

Modern Rep. 3 pt. p. 269. The King against *Fairfax*; three Judges, that they might compel, but Lord Chief Justice *Holt* against it, that they cannot: For there are no compulsory Words in the Statute for that purpose, nor any which oblige a Master to take an Apprentice; and if not, the Justices have not power to compel a Man to take a

pool

Apprentices.

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poor Boy, for possibly such may be a Thief or Spy in his Family. *B. R. Term. Mich. 1 W. & M. Shower's Rep. p. 76. S. C. S. P.*

It was agreed by the whole Court, That the Trade of a Barber is within the Statute of 5 Eliz. ca. 4. *Term. Mich. 14 Car. 2. B. R. Levinz. Rep. 1. p. 87.* J. B. was indicted before the Justices of Peace of the City of Oxon for using the Trade of a Salesman, not having served as an Apprentice for seven Years. Upon a Demurrer to the Indictment, it was resolved, That this was a Trade within the Statute of 5 Eliz. ca. 4. *Term. Trin. 32 Car. 2. B. R. Raymond's Rep. p. 385.* The King against John Bishop.

Keb. Rep. Mich. 14 Car. 2. B. R. p. 411. Pl. 115. & p. 422. Pl. 143. Turner against Wood. S. P.

An Order made at the Quarter Sessions at Gloucester, was removed into B. R. confirming another made by the Justices there, for placing of a poor Boy to be an Apprentice in Husbandry, and it was quash'd, because the Statute has intrusted the Churchwardens and Overseers of the Poor, by and with the Approbation of two Justices, &c. and the Churchwardens were not mentioned in the Order. *Term. Mich. 1 W. & M. B. R. Mod. Rep. 3d pt. p. 269, 270, 271.* The King against Fairfax.

T. was a Merchant who exported Cloth to Turkey, and he employed Men in his House, in the Trade of a Cloth-worker, which Men had been educated in the said Mystery for the space of seven Years; he provided Materials for them, and paid them weekly Wages, but he himself was not Apprentice to the said Trade. Chief Justice

Holt

Holt and two other Judges against the Opinion of Judge *Dolben*, were of Opinion, That *T.* was guilty of exercising of the Trade of a Cloth-worker, against the Statute of *5 Eliz. ca. 4.* For the private usage of a Trade is not within the meaning of this Law; yet if what is done be for Profit and Gain, and not confined to a particular Family, 'tis an exercising of a Trade within the Intention of this Statute. And therefore they gave Judgment against *T.* *Term. Mich. 2 W. & M. B. R. Modern Rep. 3d pt. p. 313. Hobbs, qui tam, &c. against Young.*

One *Crane* was put Apprentice by the Justices of Peace to one *Browning*: He dies, Administration is committed to one *Pott*. The Apprentice falls Sick, and becomes chargeable to the Parish. The Justices of Peace make an Order for sending him to *Pott*, to maintain and provide for him: He appeals to the Quarter Sessions, and there the Order is confirmed. The whole is removed into *B. R.* A Motion was made to quash their Orders, because the Justices had no Authority to make such Orders, their Jurisdiction being only upon the Person of the Master, and not upon his Executors or Administrators. Such a Construction must bring a great Confusion in the Law; for suppose no Assets, shall the Justices of Peace try that? Shall this Expence and Charge be pleadable to any Creditor? Suppose the Administrator live in another Parish or County, must the Apprentice be sent after

the Administrator? Suppose the Administrator proves poor himself, then that Parish where he lives must be chargeable with this apprentice, which certainly the Statute never intended. If there be Covenants in the indenture which reach the Executors, those may be saved, and the Administrator might have liberty to plead to it. But as it was made he must be saddled, &c. For these Reasons, by the Court, the Order was quash'd. *Term. Trin. 4 W. & M. B. R. Shower's Rep. 405. K. and Q. against Pott and the Inhabitants of Beddingfeild in Suffolk.* The Assignment of an Apprentice, even tho' with his Consent, will not make him an Apprentice to the Assignee within 5 *Eliz. ca. 4. Term. Trin. 27 Car. 2. B. R. Keb. Rep. pt. 3. 519. Pl. 81. The King against Channell.* Justices of Peace have Conusance of Apprentices bound by Indentures or otherwise, as well by private Persons as by the Overseers of the Poor. *Term. Pasch. 13 Car. 2. B. R. Keb. Rep. 1. pt. p. 6.* A Brewer is within Statute 5 *Eliz. ca. 4.* and cannot exercise the Trade unless he has served seven Years Apprenticeship. So adjudged *B. R. Term. Trin. 5 Jac. 1. Cro. Jac. 178. Pl. 17. Shoyle against Taylor.* This judgment affirmed upon a Writ of Error. *Term. Mich. 6 Jac. 1. Co. Rep. 8. f. 129. b. Rep. 13. p. 11.* K. was indicted at the Sessions of the Peace in the County of *Sussex*, for using the Trade of a Woollen-Draper for three Months, not having served seven Years Apprentices.

prenticeship, contrary to the Statute of 5 *Eliz. ca. 4.* Which Indictment being removed by *Certiorari* into *B. R.* Judgment was there given against him, notwithstanding he pleaded, That he was a Freeman of the City of *London.* *Term. Mich. 21 Car. 2. Saunders's Rep. 1. p. 311. Dom'us Rex versus Kilderby. Siderf. 1. p. 427. Pl. 12. S. P. & S. P.*

Kebl. Rep.
2d. pt. 592.
Pl. 13. S. C.

The Justices of Peace have the same power of discharging Apprentices, upon the Complaint of the Master against the Apprentice, as upon Complaint of the Apprentice against the Master. And so it was adjudged in *Hawksworth* and *Hillary's Case*, upon an Order made at the Sessions of the Peace in *York*, upon the Master's Complaint, where the Justices discharged the Servant, which was removed by *Certiorari* into *B. R.* *Term. Mich. 21 Car. 2. Saunders's Rep. p. 314.* The same was said by the Court in the Case of *Watkins* versus *Edwards.* *Term. Trin. 29 Car. 2. B. C. Modern Rep. 1. p. 286.*

Term. Mich.
14 Car. 2. B. R. Twisden
Levinz. Rep. pt 1. p. 84. Raymond's Rep. p. 65. The King against Tillifer S. P.

It was holden by all the Court (except *Twisden*) That it is in the Power of the Justices of Peace to compel any Person to take an Apprentice : And so it was adjudged, upon great Advice, by all the Judges, at the Time of *Mountague* Chief Justice. For the Justices of Peace are appointed to be the Executioners of the Statute, and it shall be fruitless, unless they have Authority to compel Men to take Apprentices. But *Twisden* said, That the Parish ought to raise Stock to bind out Apprentices to those

who were willing to receive them: And if it should be otherwise, my Enemy, or the Son of my Enemy, might be put into my Service, which would be dangerous, and of great Inconvenience. *Term. Hill. 14 & 15 Mar. 2. B. R. Siderf. Rep. 1. p. 99. Cante-
will and the Parish of Eginton.*

Indictment on Stat. 5 *Eliz.* for exercising the Trade of a Merchant-Tailor, and quashed, because not a Trade used before the Statute, and much less a Trade within the Statute.

A Motion was made to quash an Indictment against Defendant, for not obeying an Order of the Justices at their Sessions, made in pursuance of the Stat. 5 *Eliz.* for removing an Apprentice from his Master, and Cause shewn was, the Order of the Justices was not set forth in the Indictment, to be under Hand and Seal, according to the Case in *Saunders's Reports. Tamen quære.*

Arms.

Every Justice of Peace, Sheriff, and other Minister, or other Subject, may arm themselves to suppress or resist Disturbers of the Peace and Quiet of this Realm: But it is most discreet for every one to attend and be assistant to the Justice, Sheriff, or other Ministers in the doing of it. Resolved by all the Judges, 15 *Apr. 39. Eliz. opb. Rep. p. 121. Pl. 2. S. P. And Rep. 2. 66, 67. Pl. 49.*

Arrest and Imprisonment.

Term. Mich.

13 H. 7. Keb.

E. 41. a. Pl. 6.

Term. Mich.

22 Ed. 4. f. 35.

b. Pl. 16.

Term. Mich.

14 H. 7. f. 7.

b. Pl. 19.

Term. Pasch.

2 Ed. 4. f. 6.

b. Pl. 15.

Term. Hill.

37 Eliz. 620.

Eliz. p. 375.

Pl. 25. Shar-

rock v. Han-

nemer. Owen.

Rep. p. 105.

S. C. Term.

Pasch. 4 Ed. 6.

Plow. Com. f.

37. a. Plat. v.

Vic' de Lon-

don. Trin.

37 Eliz. Rot.

244.

IF any Affray be made in the view of a Justice of Peace, he may lay Hands on and arrest the Offenders, and commit them to Prison, till they find Sureties for the Peace. 9 Ed. 4. 3. a. Pl. 10. 13 Ed. 4. f. 8. b. 9. a. 21 H. 7. 22. b. That if he that makes an Affray do flie into a House when the Justice of Peace cometh to arrest him, he may (in fresh Suit) break open the Doors and take him, tho' it be in another County, because the Prince hath an Interest in the matter; and in such Case, a Man's House shall be no refuge for him, as it should be in Debt or Trespass, where the Interest is only to some particular Party. But it must be understood, That the Justice, in such Case, can only send to a Justice of that County, whether he has pursued him, that the Justice of that County may commit him till he finds Sureties.

If a Justice of Peace commands a Constable to keep a Prisoner till next Day, he not having opportunity then to examine the matter, in false Imprisonment brought against the Constable, the Justice's Verbal Order was judged a good Justification, tho' it was not alledged what the Cause was which the Justice had to imprison him, which proves the Verbal Order of a Justice of Peace to a Constable to be good. *Moor's Rep.* p. 408. Pl. 551. *Broughton versus Mulshoe.*

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But a Justice cannot in his absence command any one to arrest another, without a Warrant in Writing. *Term. Mich. 14 H. 7. b. Pl. 29.*

Any Person may arrest a Night-walker, because it is for the publick good. *Term. Mich. 4 H. 7. f. 18. b. Pl. 12. Term. Mich. 5 H. 7. f. 5. a. Pl. 10. Pult. de Pace., f. 10. a. Pl. 31.*

A Battery committed by the Wife, she shall be imprisoned and not the Husband. *Lib. Ass. 22. Pl. 87.*

One Justice of Peace may commit a Man who holds Land by force. *Mich. Term. 21 H. 6. f. 5. a. b. Pl. 14.*

Suspicion only, where no Felony is committed, is no cause to arrest a Man. But if a Felony has been committed, and one doth suspect J. S. to have committed the same Felony, then he may arrest him, and a Justice may commit him. *Term. Hill. 7 H. 4. f. 35. Pl. 3. Term. Trin. 27 H. 8. f. 23. 2. Pl. 22. Term. Hill. 14 H. 8. f. 16. a. Pl. 3. Vide Title Constable.*

Common Voice and Fame of the Country is a great Cause of Suspicion of Felony, where a Felony is committed; as, That A. committed the Felony; or, That A. poisoned B. *Term. Trin. 11 Ed. 4. f. 6. b. 7. a. Pl. 11. Term. Pasch. 2 H. 7. f. 15. b. Pl. 1. H. 7. f. 4 & 5. Pl. 10. Term. Hill. 7 Eliz. Dyer 236. a. b. Pl. 26.*

A. beats and wounds B. in such manner that he is in danger of dying. C. arrested A. and imprisoned him, till it might be known

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whether *B.* were like to live or die. *A.* brought false Imprisonment against *C.* who justified; and allowed a good Plea in Bar. *Term. Hill. 38 Ed. 3. f. 6. b. 7. a. Term. Pasch. 10 H. 7. f. 20. a. Pl. 8.*

If a Justice of Peace direct a Warrant to a Constable to arrest one, and bring him before the same Justice, or any other Justice of the Peace, the Constable may carry him before what Justice he pleases, and not what Justice the Prisoner pleaseth, so that the Justice dwells at a convenient distance, and not too far from the Parties own Habitation. *Co. Rep. Lib. 5. f. 59. Foster's Case.* In which Case *Wray* Chief Justice said, That a Justice of Peace might make his Warrant to bring the Party before himself, and that such Warrant is good and sufficient in Law, because it is to be supposed, that he who granted the Warrant was best apprized of the matter, and therefore most likely to do Justice in the Case.

Threatening to take and imprison a Man, is no cause to arrest and imprison him till he find Surety for the Peace. *Term. Hill. 17 Ed. 4. f. 4. a. Pl. 2.*

If one carries *Latrocinium*, or the thing stolen, along with him, he may be arrested in one County and carried into another, because this is Felony in all Counties: But if one be arrested in one County upon the suspicion of Felony done and committed in another County, he may then be carried before a Justice of Peace in the said County where the Felony was done, and to be there tried,

tried. *Term. Trin. 12 Fac. 1. Bulstr. 2. 264.*
The King against *Underel.*

A Justice of Peace grants a Warrant, this will justify the proper Person who arrests the Party against whom it is granted. But not to break open the Doors unless in case of Felony or Treason. *Term. Trin. 9 Fac. 1. Bulstr. Rep. 1. p. 146. Forster against Hill. Brownl. Rep. pt. 1. p. 211. Mouzey against Johnson. S. P. Term. Hill. 12 Fac. 1. Bulstr. Rep. 2. p. 335. Wilson against Dodd. D. S. C. in Roll. Rep. 1. p. 135. Pl. 15.*

To call a Justice of Peace Fool, when he is in the Execution of his Office, is a Misdemeanor, for which he may be apprehended and imprisoned. *Term. Mich. 39 Eliz. Moor's Rep. p. 247. Pl. 389. S. P. Cro. Eliz. p. 78. Pl. 38. Simons versus Sweet.*

A Constable cannot justify imprisoning of one who disturbs him in doing his Duty, tho' he gives him ill Language, or makes an Assault upon him, or otherwise ill behaves himself. *Term. Trin. 31 Eliz. Savil's Rep. p. 97. Pl. 178.*

A. had lost five Heifers, and he took out a Warrant against B. and found one of them in his Custody, and was bound over to prosecute, which he did; but B. was acquitted, and brought an Action, but Judgment for A. *Bridgm. Rep. p. 60. Trin. 14 Fac. 1. Weab against Wells.*

E. P. Constable of O. was brought in to B. R. upon an Attachment of Contempt; where it appeared by his Examination that he arrested one A. H. in the Church-yard

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upon a *Sunday* as he came from Divine Service, by a Process of the good Behaviour out of the Sessions, when the said *A. H.* shewed him that he had a *Certiorari* out of this Court. But he pretending he could not read, arrested and detained him, until he went into another House, and procured it to be read to the said *E. P.* who then discharged him. And for this Contempt, because he was arrested upon a *Sunday*, immediately after Divine Service, whereas he might have arrested him upon any Day of the Week, he was fined 20 *l.* and for arresting and detaining him after the Writ of *Certiorari* shewn (his Ignorance not excusing him) he was order'd to be bound with Sureties to the good Behaviour; but the Fine and Imprisonment were discharged, because the Arrest was by Process of the Sessions of Peace, altho' the Court declared it was not well awarded according to the Statute 21 *Jac. 1. ca. 6. Term. Hill. 16 Car. 1. B. R. Cro. Car. p. 602. Pl. 6. Printer's Case.*

S. C. Moor
Rep p. 284.
Pl. 36. Cro.
Eliz. p. 287.
Pl. 1. Poph.
Rep. p. 52.
Owen's Rep.
p. 102.

If any Person brings a Child into a Parish and leaves it there, without keeping or nourishment, a Constable may arrest him, and carry him before a Justice of Peace, who is to examine him, and bind him over to be punish'd, for 'tis a great Offence. *Trin. Term. 31 Eliz. Leon. 1. p. 327. Pl. 462. Beale and Carter's Case.*

A Justice of Peace his Warrant will not justify a Constable in breaking into a House to apprehend any Person for a less Crime than

Assault.

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than Felony, or suspicion of Felony. *Trin. Term. 9 Jac. 1. p. 146. Foster versus Hill.*

Indictment against an Officer for keeping a Man in his own Custody from *Saturday* to *Monday*, when he was committed by Warrant of the Justices of the Peace to *New Prison*. Now tho' the Sheriff may keep a Prisoner in his own Custody some reasonable Time till Bail procured, yet an Under-Officer ought not: But this Indictment was quash'd, because there is another Remedy against this Officer by committing him for the Contempt.

Assault.

IF one Man do assault another, if he which is assaulted may escape with his Life, or without being wounded or maimed, it is not lawful for him to beat or wound the other who made the Assault. *Term. Mich. 2 H. 4. f. 8. a. Pl. 41. Term. Pasch. 32 H. 6. f. 18. b. Pl. 10.*

A Man may justify the beating of another in the Defence of his own Goods and Chattels, if an Attempt be made to take them from him. *Term. Mich. 19 H. 6. f. 31. a. Pl. 59. and Pasch. 19 H. 6. f. 65 & 66. a. Pl. 5. 9 Ed. 4. Term. Mich. f. 28. b. Pl. 42. Kellewey 92. Trin, Term. 22 H. 7.*

The Servant may justify the beating any one who doth assault and would beat, his
Term. Mich. 21 H. 7. f. 39. a. Pl. 50.

his Master or Mistress, and the taking away any Weapons wherewith the Assailant would beat, &c. the Master, &c. and keep them till his Rage be abated. *Term. Hill.* 35 H. 6. f. 50 & 51. a. Pl. 15. *Term. Pasch.* 12 Ed. 4. f. 6. a. Pl. 15.

If a Man hath a Mill, whereunto a River or Spring of Water doth run, and hath run Time out of Mind, and one would stop it and turn it another way, and the Owner disturbs him, and the other assaults the Owner, and attempts to beat him, the Owner may justify the beating him. *Term. Hill.* 3 H. 4. f. 8. a. 9. b. Pl. 3.

Every right Owner may justify in every Battery of another, who doth menace or assault him, and attempt to beat him for the lawful Defence of his own Freehold or Term, and from his lawful Highway. *Term. Pasch.* 10 Ed. 4. f. 6. b. Pl. 15.

The Master of an Apprentice may justify the stripping and beating his Apprentice with a Rod, for being negligent in learning his Trade; and a Master may justify correcting his Scholar for not learning his Book. *Term Pasch.* 21 Ed. 4. f. 6. a. Pl. 17.

The putting into an House, binding and beating an Lunatick, attempting to burn a House, or do some other Mischief, or to hurt himself or others, is justifiable. *Term. Hill.* 22 Ed. 4. f. 45. a. b. Pl. 10.

^aTerm. Mich. If any Person be arrested upon any regular and due Process, and he resists the Officer by drawing his Sword, or other Force, ^a & b. Pl. 20. ^bFitz. Title Trespass 108, the Officer may justify beating him. ^aTerm. Mich.

Mich. 21 H. 7. f. 39. a. Pl. 51. b Br. Title Trespafs 218.

If *A.* commands, procures or hires *B.* to beat *C.* and he doth beat *C.* whether *A.* be present or absent, this is a breach of the Peace. 22 *Aff. Pl. 59. Fitz. Title Trespafs 226. Term. Pasch. 21 H. 6. f. 39. b. Pl. 6. by Telverton.*

If two or more do agree to play at Backsword, Foot-ball, or such like, and one of them doth beat, bruise, or wound another, this is no breach of the Peace, because it is by Consent: But if the same Day, or some other, after the Pastime is at an end, one will assault and beat another for any wrong conceived in the Play, that is a breach of the Peace. *Fitz. Abr. 244.*

A Constable may justify his laying his Hands on any one who is assaulting another. *Term. Pasch. 21 H. 7. f. 21. a. Pl. 5.*

Bakers.

A Baker was indicted, and three Exceptions taken to the Indictment. 1. That he was indicted for using *facultatem pistoris*, and not say *panis humani*. 2. For baking *panis tritici*, *Anglicè*, Household-bread; whereas it signifies only Bread made of Wheat, and not Household-bread, for that may be made of other Corn. 3. For bakidg *panis Assis*, without a dash for *panis As-*

Barratry.

Affisa. And for these Exceptions the Indictment was quash'd. *Term. Hill.* 23 *Car.* 1. *B. R. Style's Pep.* p. 24.

A Baker was indicted for selling of Bread under the Assize; and the Indictment was quash'd, because it did not show where he sold the Bread, nor to whom. *Term. Mich.* 1649. *Style's Rep.* p. 106.

Barratry.

E. con. Term.
Mich 3^a &
33 Eliz. Cro.
Eliz. p. 195.
Pl. 11. Parcel's Case.
Vide Term.
Pasch. 17 Jac.
1. Cro. Jac. p.
527, Pl. 4.
Palfrey's Case.
The Indictment good without alleging special Words.

IN an Indictment against one for Barratry, there must be a place exprest where he is a Barrator, or it is not good, So resolved *B. R. Term. Pasch.* 3 *Car.* 1. *Godb. Rep.* p. 383. *Pl.* 471. *Mann's Case, Latch.* 194. *S. C.*
Upon a Writ of Error to reverse a Judgment given against him upon an Indictment of Barratry, two Exceptions were taken. 1. That it doth not appear in the Indictment, before what Commissioners the Indictment was taken, upon which the Judgment was given; for it ought to appear by the Indictment, that it was taken before the Justices of Assize, or Justices of Peace, or of Gaol-Delivery. 2. The Judgment is, *quod solvat tantam denariorum summam*, and shall find Sureties for the good Behaviour, and this is rather an Award than a Judgment. *Rolls, Justice,* answered, If it be a good Order,

der, it is a good Judgment. *Term. Trin.*
23 *Car. 1. B. R. Style's Rep. p. 29.* The
King and *Marshal.*

W. T. was indicted at *Oxford Sessions* as
a Common Barrator: And the Indictment
was quash'd, because no Time was alledg-
ed when he was a Common Barrator, and
stirred up strifes, tho' the Indictment was,
He is a Common Barrator. *Term. Mich.*
21 *Fac. 1. Benloe's Rep. p. 133. Walter Tho-*
mas's Case.

T. was indicted at the Sessions as a promo-
ter of Suits, and *communis vicinorum oppres-*
sor, &c. and was acquitted of all, but
(*communis vicinorum oppressor*) and of that
he was found Guilty, and Judgment given
against him at the Sessions, and he was fined
200 *l.* He brought a Writ of Error, and
because the word *Barreſſator* was not used
in the Indictment, which the Court said was
a word of Art in this Case, the Judgment
was reversed; but the Court bound him to
his good Behaviour, and directed a new In-
dictment to be brought with the word *Barreſſa-*
tor. *Term. Pasch. 18 Car. 2. B. R. Siderf.* *Keb. Rep. 2d.*
1, p. 282. Pl. 13. The King against *Hard-* *pt. p. 24. Pl.*
wicke. *Term. Mich. 22 Car. 2. B. R. Ven-* *51. & p. 42.*
tris Rep. p. 104. The King against *Ledging-* *Pl. 84. S. C.*
ham. S. P. Modern Rep. 1. p. 71. S. C. Le- *Modern Rep.*
vinz. Rep. 1. p. 299. S. C. Raymond, p. 205. *pt. 1. p. 288.*
S. C. communis oppressor is too general. *The King*
against Ledg-

One was indicted at a Sessions of the
Peace, of Barratry, and a *Certiorari* brought,
and the Indictment removed into *B. R.* and
there it was resolved, That Barratry is an
Offence

Bastardy.

Offence of a mix'd Nature, of which the Justices of Peace cannot hold Plea by vertue of their Commission. *Term. Hill. 17 Jac. I. Roll. Rep. 2. p. 151.*

Bastardy.

A. At *Lincoln*, upon Complaint to two Justices of Peace next adjoining, was ordered to keep a Bastard-Child, he being by the said Order adjudged the reputed Father. From this Order he appealed to the next Quarter-Sessions, and he was discharged, and the Order repealed. Afterwards at another Quarter-Sessions it was ordered, That he should be accounted the reputed Father, and should keep the Child: And that if he did not perform it, he should be apprehended and committed; which he was accordingly: All which matter was returned into *B. R.* All the Court delivered their Opinions *seriatim*, That the Order in the first Sessions was concluding, and the Order in the last Sessions was meerly void: For the Stat, 18 *Eliz. ca. 3.* appointing, That upon an Appeal to the Sessions from an Order of two Justices, their Order shall bind him who is adjudged to be the reputed Father; and *A.* having appealed, and they making an Order in Court, that Order is final, and no other Sessions nor Authority may meddle therewith. And it was held, That

That the Statute of 3 Car. 1. ca. 4. doth not aid in this Case; for that Statute is, That if the two next Justices make not provision for the Bastard-Child, the Justices at the Quarter-Sessions shall settle an Order for keeping of the Bastard, as the two next Justices ought: But it doth not give more Power or Authority, nor gives Authority to one Sessions to alter that which in a former Sessions was ordered. *Term. Hill. 9 Car. 1. Cr. Car. p. 341. Pl. 5. & 350. Pl. 15. Pridgeon's Case, S.C. reported in Jones's Rep. p. 330. Pl. 3. The very same Point in 13 Car. 1. Bulstr. Rep. 2. p. 355. Wood of Beckford's Case.*

A Man being sentenced to be the reputed Father by Justices of Peace at the Sessions, which is by Authority of the Statute Law, it cannot be impeached in the Spiritual Court nor elsewhere. *Term. Mich. 19 Jac. 1. Cro. Jac. p. 625. Pl. 18. Webb versus Cook.*

The two first and next Justices have no power to commit any one for not performing their Order, but they are to bind him over to appear at the next Quarter-Sessions. *Term. Mich. 3 Car. 1. Bulstr. 2. p. 341. Hammond's Case.*

At the Quarter-Sessions, the Justices are either to affirm the former Order or to disallow it, and then they may refer it back to the same Justices (if in the County) which made the first Order, to consider better of it, and of the Proof; for the matter is then before them, as *res integra*. *Term. Mich.*

Siderf. 2. p. 29. S. P. Ventris Rep. 1. p. 59. S. P. Keb. 1. p. 546. Pl. 48. S. P. Keb. Rep. 2d pt. p. 604. Pl. 31. The King against William of Somersetshire S. P. Hill. 21 & 22 Cas. 2.

Mich. 6 Car. 1. Bulstr. Rep. 2. p. 341, 342. Smith's Case.

The Recognizance taken ought to be in the Disjunctive, *viz.* to perform the Order by them made, or to appear at the next Quarter Sessions, and to abide the Order there, *Smith's Case, supra!*

Mich. Term. 1655. Style's Rep. p. 475. Denton's Case. S. P.

Justices of Peace, nor yet Justices of Assize, have any power to meddle with Bastard-Children, upon Stat. 18 *Eliz. ca. 3.* but upon an Appeal at the Assizes or Sessions. Agreed by the whole Court. *Term. Pasch. 8 Car. 1. Bulstr. Rep. 2. p. 343.* The Case of *Bowber and Painter.*

A Woman had a Bastard-Child, but was not punish'd for it; afterwards she had a second: She cannot be punish'd for this as a second Offence, but this second shall be deemed and taken as her first Offence, to be punish'd according to Stat. 7 *Jac. 1. ca. 14. 7 Car. 1. Bulstr. Rep. 2. p. 348.*

A Bastard-Child is to be kept by the Parish where the same was born (if no Practice was used to have the Child there to be born) but if any such Practice be proved, then this Rule doth fail, and then the Child is to kept and provided for by the Parish where the Mother did dwell, and where she was got with Child, and which used the Practice to have the Child born in another Parish. *2 Car. 1. Bulstr. Rep. 2. p. 349.* Vill of *Tewkesbury* against Vill of *Twynny.*

A. was charged by *B.* with getting of a Bastard-Child upon her Body. The two next Justices did not make any Order in it, according

According to Stat. 18 *Eliz. ca. 3.* But the Cause came to be heard at the General Sessions of the Peace in the County of *L.* where it was proved by Witnesses, That one *J. S.* had often used private Company with the said *B.* and had confessed, that he had done as much to her as Man could do to a Woman, and that she said, That *J. S.* had the Use of her Body. And upon this it was ordered at the Quarter-Sessions, That *A.* should be discharged of the Child, and *B.* should be committed to the House of Correction during her Life, and *J. S.* the reputed Father should pay for the keeping of the Child. Afterwards at the Affizes at *L.* the Judges ordered, That the two next Justices to the Parish where the Child was born, should take Consideration thereof, according to the Statute, and settle such Course therein as to Justice appertained. Thereupon the two next Justices declared *A.* to be the reputed Father, and that he should pay 18 *l.* to the Overseers of the Poor, and 14 *s.* weekly, which he refused to do, and the two next Justices committed him. This was removed by *Certiorari* into *B. R.* and it was resolved by the whole Court. 1. That before the Statute 3 *Car. 1. ca. 4.* the Justices at the Sessions had no Authority to meddle in the Case of Bastardy, till the two next Justices, according to the Statute 18 *Eliz. ca. 3.* had made an Order therein. 2. That by the Statute 3 *Car. 1. ca. 4.* the Justices at the Sessions have Power and Authority original- to make an Order in the Case of Bastardy:

D

dy:

dy: And therefore the first Order in the Case in question was good and legal, and the second Order made by the two next Justices was void, and could not alter or revoke the Order which was made by good Authority. 3. That the commitment of *B.* for her Life for her first Offence, was more than the Justices had Authority to do. But that Error which concerned *B.* should not vitiate the whole Order. *Term. Pasch. 13 Car. 1. Cro. Car. p. 470. Pl. 1. William Slater's Case.*

It was said to have been resolved, That a Bastard-Child of Persons able to keep it, and not like to be chargeable to the Parish, is not within the Statute 18 *Elix. ca. 3.* And a reputed Father is to be adjudged by the two next Justices of the Peace or the Sessions. *Term. Hill. 11 Car. 4. Cro. Car. p. 436. Pl. 5. Salter versus Browne.*

A single Woman was got with Child by a single Man; the Child was born in the Parish of *O.* eleven Years since. *B.* the reputed Father took the Child from the Mother, and placed him at Nurse elsewhere. Afterwards *B.* married another Woman, and with her did cohabit in the Parish of *C.* the Bastard-Child dwelt with him, and had been maintained by him ten Years: After, the reputed Father died, leaving his Wife and divers Children begotten on her, and all the Bastard-Child. This Bastard-Child is to be sent to his Mother to be kept and maintained, if she be of Ability; but if not, then to the Parish of *C.* who are to keep and maintain this Bastard-Child, in regard he has been

been there settled with the reputed Father, where he was fourteen Years; and to this Place of his last settling, as to the place of his Birth, the Law hath respect: And so it was ordered at *Salop Assizes, 19 March, 7 Car. 1. Bulstr. Rep. 2. p. 350.*

The Court was moved to quash an Order of Sessions made, That one should keep his reputed Child, because he had kept him heretofore: But it did not appear by the Order, either that he was his Bastard or his lawfully begotten Child. The Order was quash'd. *Term. Mich. 24 Car. 1. B. R. Style's Rep. p. 154.*

An Order for keeping a Bastard-Child was quashed, because the Order did not direct how long the Party should keep the Child. *Term. Mich. 24 Car. 1. B. R. Style's Rep. p. 154.*

An Order made by the Justices for the keeping of a Bastard-Child, was quash'd for two Reasons. 1. Because the Order was, That the Party should pay a weekly Sum for the keeping of the Child, whereas no such Order can be made without the Party's Consent, for by the Statute 18 *Eliz.* *Style's Rep. ca. 3. he is only compellable to secure the Trin. 1653. Parish where the Child is born, that it shall p. 386. S. P.* be no charge to the Parish. 2. It did not appear, that the Justices had any power to make such Order; for it appears not where the Child was born; and so it may be it was born in another County where the Justices had no power to act; for they can't

act out of the County. *Term. Pasch. 23 Car. 1 B. R. Style's Rep. p. 14.*

An Order, made at a private Sessions of the Peace, That one should contribute to half the Charge towards keeping of a Bastard-Child, because he did suffer a Soldier to get the Child upon the Body of his Maid-Servant, was removed by *Certiorari*, and quashed, because it is not within the Statute of 18 *Eliz. ca. 3.*

An Order of Sessions for paying so much Money weekly to a Parish towards the keeping of a Bastard-Child, was quash'd, because it did not appear by the Order, that the Child was born in that Parish to which the Money was to be paid. *Term. Hill. 1652. Style's Rep. p. 368.*

It was resolved, That the Words of the Statute 18 *Eliz. ca. 3.* (next Quarter-Sessions) shall be intended, that the Order made by the Justices shall be confirmed at the next Quarter-Sessions of that part of the County where it was made, and not the very next Sessions in the County, because that would be mischievous in many Counties.

Term. Trin. 15 Car. 2. Siderf. Rep. r. p. 149. Pl. 14. The King against *Coystan*. In the same Case it was resolved, That altho' such Orders about Bastards made by Justices of Peace be void for part and against Law, yet for so much as is good they would confirm them.

The Justices of Peace at the Sessions for B. made an Order, That S. the reputed Father of a Bastard-Child should maintain it:
Which

Which Order was removed into *B. R.* and four Exceptions taken. 1. Because it is said, That it was made by two Justices, and doth not say *Quor. unus.* 2. Because the Money is not ordered to be paid weekly (as it ought) but monthly. 3. Because it is ordered to be paid till the Child be of the Age of fourteen Years, which ought not to be, but so long as the Child shall be chargeable to the Parish. 4. Because it is, That the reputed Father shall give such Security as the Church-wardens should think fit. Which Order seemed not good. *Term. Mich. 16 Car. 2. B.R. Siderf. Rep. 1. p. 222. Pl. 10.* The King against *Sbarpe. Keb. Rep. 1. p. 782. S. C.*

Term. Mich. 21 Car. 2. B. R. Ventris Rep. 1. p. 48. Burnet's Case. S. P.

H. was ordered to pay 8*l.* for relief of a Bastard-Child, of which he was the reputed Father, and after that so much a week: And it appearing to the Court that *H.* had no Notice of the Order till the Time which is given him by the Statute to appeal to the Sessions was past, the Court made a Rule, That the next Sessions in *Middlesex* (where the matter was) should hear the matter, and make an Order for the charge or discharge of *H.* according to their Discretions, and that should be final. *Term. Pasch. 19 Car. 2. B.R. Siderf. Rep. 1. p. 326. Pl. 6.* The King against *Hill.*

Upon a Motion to quash an Order for maintaining of a Bastard-Child at Sessions of Peace at *H.* Exception was taken to it, because it was unreasonable in respect of the smallness of the Allowance, being but

2 d. a week. And the Court were of Opinion it was ill, and said, That tho' none but Justices of Peace could declare the Father, yet it seems that if the Justices be unreasonable in the Sum, the Court might judge of that, And another Exception was taken upon reading the Order, That it did not say directly that P. was the reputed Father. And the Court said it was not good. *Term. Pasch. 20 Car. 2. B. R. Siderf. 1. p. 363.* The King against *Perkassé*.

An Order for the keeping a Bastard-Child being removed by *Certiorari*, it was moved to have it quash'd, because it was *ad Sessionem Pacis in Com' præd'*, and doth not say, *Tent. pro Com. præd'*. But the Court over-rul'd it, for such strictness is not required in an Order. It was further alledged, That it ought to appear that the Child was likely to become chargeable to the Parish, which was agreed: But that was sufficiently set forth in the Order, for he was ordered to pay such Charges as the Parish had been at. The Court confirmed the Order, and awarded, That the Father of the Bastard should pay such Costs as the Parish had been at for contesting of it. And the Court committed him, *Term. Trin. 21 Car. 2. B. R. Ventris Rep. 37.* The King against *Nelson*.

Upon Complaint to two Justices about a Bastard-Child, they order one R. to keep the Child: Upon this, R. appealed to the Sessions, where they vacated the Order and referr'd it back to the Justices, who do nothing. The next Sessions after P. is adjudged

judged the reputed Father, and ordered to pay so much a week to the Parish till the Child be twelve Years old. This was removed by *Certiorari*, and the Court resolved, That the referring back to the Justices, by the Justices at the Sessions, was not warranted. *Term. Mich. 21 Car. 2. B. R. Ventris Rep. p. 48. B. R. Burnet's Case.*

If one upon Complaint to two Justices be ordered to keep a Bastard-Child, and this upon an appeal to the Sessions is revoked, that Person is absolutely discharged, and unless a Father can be found, the Court said, The Justices of Peace must keep it themselves. *Term. Hill. 21 & 22 Car. 2. B. R. Ventris Rep. 1. p. 59.*

A Motion was made to quash an Indictment for not performing an Order of the Justices of Peace concerning a Bastard-Child, because it did not conclude *contra pacem*. But it was held, That that ought not to be, it being but a *Non-feasance*. *Hill. Term. 22 & 23 Car. 2. B. R. Ventris Rep. 1. p. 108.*

By *Certiorari*, an Order for keeping of a Bastard by the Justices was removed into *B. R.* and two Exceptions to it taken. 1. Because they had appointed the Father to allow 4 s. to the Midwife; whereas it did not appear that the Parish had procured her, or that they were chargeable with it. 2. For that they allowed 7 s. a Week for the Nursing, Cloaths, &c. until it should be able to get its Living by working, which was said to be excessive in the Sum, and uncertain

tain for the time ; for it should have been for so long time as it shall be chargeable to the Parish.

Hale said, That they could make no Allowance to the Midwife, unless in discharge of the Parish.

Twisden said, That they could not order 7 s. a Week to be paid, until it should be able to get its Living for perhaps the Father would take it away and maintain it himself, which he might do if he pleased, *Term. Pasch. 24 Car. 2. B. R. Ventris Rep. 1. p. 210. Sherman's Case.*

Term. Pasch. 14 Car. 2. B. R. Levinz. Rep. 1. p. 62 The King against Kimberty and Mary North. S. P. *A. and H.* were indicted at the Sessions in London, for conspiring to charge one with the keeping of a Bastard-Child, and thereby also to bring him to Disgrace ; and found guilty. And upon a Motion in Arrest of Judgment, that the bare conspiring, without executing of it by some Overt Act, was not subject to Indictment : But it was not allowed, for there was as much Overt Act as the nature and design of this Conspiracy did admit, in regard there was no Child really, but only a Contrivance to defame the Person, and cheat him of his Money, which was a Crime of a very heinous Nature. *Term. Hill. 28 & 29 Car. 2. B. R. Ventris Rep. 1. p. 304. The King against Armstrong, Harrison & al'.*

Justices of the Peace at the Sessions ordered the Father of him who had the Bastard-Child to provide for it, under the presence of the reputed Grandfather ; for the Statute doth enable them to tax the Grandfather

father of a Legitimate Child. But in this Case the Court held, That there was no Colour, and therefore quashed the Order. And Judge *Wylde* said, It was well *Westminster-Hall* Doors were open. Term. Trin. 29 Car. 2. B. R. *Ventris* Rep. I. p. 311.

The Case was, One *George Bilby* of St. *Margaret's Westminster* was divorced *a mensa & thoro* in the Ecclesiastical Court from *Margaret* his Wife *ob causam Adulterii*, committed with one *William Ellick*: Whereupon she goes into the Parish of St. *George's Southwark*, and there lives with the Advowterer, and hath by him three Sons, who were christened and registered in St. *George's* Parish-Book, by the Names of *John*, *William* and *George Ellick*. The Advowterer dies; *Margaret* and her three Children afterwards go and live in St. *Leonard's Shore-ditch* Parish, but carried with them a Certificate from the Church-wardens of St. *George's Southwark*, of her's and her three Childrens being last legally settled in that Parish. They had not staid long in the Parish of St. *Leonard's Shore-ditch* but the Mother dies; then that Parish returned the three Children, by vertue of the said Certificate, to the Parish of St. *George's Southwark*: Which Certificate being only binding between the said last two mentioned Parishes, therefore the Parish of St. *Leonard's Shore-ditch* might be left out of this Case. Then two Justices of St. *George's Southwark* (*Quor. unus*) make an Order to remove the said three Children from the Parish of St. *George's Southwark* to St. *Margaret's*

garet's *Westminster*, where *George Bilby*, the divorced Husband, was then an Inhabitant, adjudging them to be born in lawful *Werklock*: From which Order *St. Margaret's* appeals to Quarter-Sessions, and Order of two Justices is confirmed, the whole matter being specially set forth therein, and both the Orders were removed into the Queen's Bench, and *St. Margaret's Westminster* moved to quash them; and for Reasons alleged, That the Settlement of a base Child is where he is born, and here these Children were born and certified to be registered as Inhabitants of the Parish of *St. George's*, and bore the Advowterer's Name. But on the other side to support the Orders it was urged that they set forth, That the Children were born after the Divorce, but during the Cohabitation; and cited *Rolle's Abridgment*, Title *Bastards*, the first Case: And therefore ordered and adjudged upon the Order of Appeal to be the Children of *George Bilby* the divorced Husband, because he was only divorced *à mensa & thoro*; so that the Marriage continues, according to the Lord *Coke's* first Institutes *la estate sur condition*, the Freehold hath a Continuance; besides the Order does not say, that he had no access to her after the Divorce, and where the Husband is within the four Seas, there the Marriage doth continue. And Lord Chief Justice *Holt* then said, It was very probable that notwithstanding this Divorce the Husband might come to her; and if so, then in the Eye of the Law, they are the

Chil-

Children of the Husband, altho' the Wife lived in Adultery with another Fellow, during which time the Children were got. But on the other side it is not to be presumed, that they did come together, it not being set forth so in the Order that they did; for it was only said therein, That these were the Legitimate Children of *George Bilby*, tho' got by the Advowterer, and that also during the time of the Separation; for in the Eye of the Law they live separate as long as the Sentence for Separation doth continue; and the Justices should have inserted this, That they came together during that time. But this Term the other three Judges *dubitant*: *Powell*, who afterwards was of the same Opinion gave Judgment, That the Children were Bastards, and that the proof to the contrary (that is to say) That the Husband and Wife came together during the Divorce, ought to come on the other side: And therefore the Court were all of Opinion that the Orders should be quash'd, and that the Maxim of the Husband's being *infra quatuor maria* ceased after a Divorce, for the proof ought to lie on the other side, that they did come together, or otherwise you will put the Husband into a worse Condition than he was before the Divorce had. And so the Orders were both quashed.

A Motion was made to quash two Orders, one made by two Justices against the Defendant, for to abide the Justices Order the next Sessions, if they should make any; and

and in the mean while to provide for his reputed Bastard-Child, by paying eighteen pence a Week for the same : But this Order was made without Complaint of any but the Woman her self ; and upon the Appeal, the Justices at Sessions adjudged him to be the reputed Father thereof, tho' the Woman was at that time married to one *Smith* who was run away. Now as to the first Order, it was made without Complaint, and therefore not good ; and as to the second, not adjudged to become chargeable. Both Orders quashed.

An Order made by two Justices pursuant to the Statute of 18 *Eliz. ca. 3. 7 Car. ca. 4. 3 Car. I. ca. 4.* for Bastardy, that the Defendant being the reputed Father should pay so much *per Week* for ten Years, and not saying, if the Child should for so long continue chargeable. From which Order the Defendant appealed to Sessions, who confirmed the Order of two Justices, and upon the Defendant's not giving Security the Sessions committed him. But objected, the Sessions hath no such Power. *Vide Trin. 12 Gulielm. 3. King versus James.* Indeed it is usual in this Case to take the Party's own Recognizance to appear at the next Sessions, and to abide such Order as the Justices should make therein ; and therefore the Justices, before they had allowed of the Appeal, should have taken Security ; but the Justices in their Sessions cannot commit for not finding Security. *Vide Case Reg. and Chaffey, 2 Annæ, 2 Bulstrode 341.*
I that

Bastardy.

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that he is indictable for the Disobedience, but not to be committed: *De hoc quære* the Order.

An Order of two Justices for the reputed Father to pay 25 s. for Charges of lying in, and 1 s. 8 d. and the Mother 4 s. per Week, for the Child's Maintainance for ten Years successively, if the Child should so long live. Removed by *Certiorari*, and Exceptions taken, 1. That it should have been for so long as the Child should be and continue chargeable to the said Parish. 2d Exception, The Justices order the reputed Father to give Security for the performance of their Order, which cannot be before he hath made default of obeying the Order; And for these Exceptions, Order quashed, but obliged the Defendant to give Security to appear at the next Quarter-Sessions, to abide such Order as there should be made by the Justices, if any be made.

Battery. Vide Assault.

Bast.

Bail.

IF Persons are bailed, who by Law are notailable, that is an Escape, and was so adjudged, *Term. Hill. 25 Ed. 3. f. 39. a. Pl. 22.*

If any Man be wounded in peril of Death, the Party who so wounded shall be arrested, and not to be bailed till perfect Knowledge be had, whether he so hurt shall live or die. *Stat. Westm. 1. 3 Ed. 1. ca. 15. Stat. 3 H. 7. ca. 1. Co. Inst. 2. 186. Rolle's Rep. Mich. 13 Jac. 1. p. 268. Pl. 43. B. R. Poyne's Case. Latch. Pl. 2. Herbert and Vaughan's Case. Vide Popb. Rep. 153.*

Where a Man killed another in his own Defence, Bail for him was refused. *Term. Pasch. 25 Ed. 3. f. 42. b. Pl. 27. 44 Ed. 3. 28. Br. Abr. Tit. Mainprize, No 11. No 56, 57. No 78.* It is said it is at the Discretion of the Judges.

Sir Nicholas Poyne and his Son were indicted for Murder, and committed to the Marshalsea without Bail or Mainprize. The King's Bench *Mich. Term. 13 Jac. 1.* when Sir Edward Coke was Chief Justice, was moved to bail them, and it was refused: And Coke declared, That for the Death of a Man he would not bail any one. *Bulstr. 7. p. 113. Term. Mich. 13 Jac. 1. B. R. Rolle's Rep. 1. p. 268. Pl. 43. S. C.*

Bail.

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The Principal in Murder is notailable, Term. Mich. but the Accessary is. 40 Ed. 3. *Lib. Affiz.* 40 Ed. 3. f. 42. Pl. 8. In Murder the Judges may bail if they see Cause, but not the Justices of Peace. Term. Mich. 21 Ed. 4. f. 70. b. 71. a. Pl. 55. *Wingfeild's Case.* Pl. 22. Term. Pasch. 43 Ed. 3. f. 17. b. Pl. 21. Term. Trin. 50 Ed. 3. ca. 15. a. Pl. 5.

A Man is outlawed of Felony, and one receives him, and entertains him after the Outlawry, he is notailable. 27 Ed. 3. *Lib. Affiz.* Pl. 10.

One counterfeited a Statute-Merchant, put a Seal to it, and sued out Execution, and took a Seal from an old Patent, and put it to a Protection, for which he was indicted, and he was not bailed. 40 Ed. 3. *Lib. Affiz.* Pl. 33.

In Felony, if the Principal die in Prison, or be attainted of another Felony, their Accessary may be bailed. *Hill. Term.* 12 Ed. 2. *Fitz. Abr. Tit. Coron.* No 378. *Br. Abr. Tit. Mainprize.* No 91.

Upon an Assembly of all the Judges, it was resolved by them, and agreed to be put in Execution in all Circuits, That if a Man taken for Felony be examined by a Justice of Peace, it appears that the Felon is notailable by Law, and yet the Justice commits him to Gaol, but as upon Suspicion of Felony, not making mention of any Cause for which he is notailable; and he is brought before two other Justices, who not knowing of any matter why he ought not to be bailed, do bail him, these Justices ought to be fined by the Statute of 1 & 2 *Phil. & Mar. ca. 13.* for they offend if they bail

bail him, who by the Statute of *Westm. 1. ca. 15.* is not bailable; and therefore they at their peril, ought so to inform themselves before they take bail of the matter, that they may be well satisfied that such an one is bailable by Law: And therefore they are to observe well the Statute of *Westm. 1. ca. 15.* who is bailable and who not by the Law. *Trin. Term. 37 Eliz. Poph. Rep. p. 96. Pl. 1.*

Where the Party wounded is in danger of Death, he who wounded him is not bailable. *Mich. Term. 22 Jac. 1. Poph. Rep. p. 153. Lewes against Jefferys.*

Where a Justice of Peace took a Recognizance of 10 *l.* from his Son, and 5 *l.* a-piece of two Sureties, to appear at the next Assizes, the Son having dangerously wounded a Man, who died before the Assizes, the Justice of Peace was fined 200 *l.* for taking Bail. The same Justice of Peace was also fined 200 *l.* for giving a Challenge, it being against his Oath to do any thing which may tend to the breach of the Peace. See *Jeffery's Case* above.

A Man who is committed by the Privy Council is not bailable. *Term. Mich. 33 H. 6. p. 28. b. Pl. 1. Term. Hill. 12 Jac. 1. Rolle's Rep. 1. p. 134. Pl. 13. Brewer's Case. Term. Trin. 13 Jac. 1. Rolle's Rep. 1. p. 219. Pl. 12. Sir Samuel Salkingstone's Case. Term. Trin. 34 Eliz. And. Rep. 1. p. 297, 298. Pl. 305.*

If a Man be committed for a matter that is bailable, and a Justice of Peace refuse to bail

Blasphemy and Profaneness.

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bail him, an Action lies against the Justice.
Term. Mich. 1649. Style's Rep. p. 182.

Behaviour. Vide Good Behaviour.

Blasphemy and Profaneness.

ONE T. was prosecuted for uttering of divers Blasphemous Expressions, horrible to hear, *viz.* That *Jesus Christ* was a Bastard, a Whoremaster; Religion was a Chear; and that he neither feared God, the Devil, or Man. Upon this Trial he acknowledged the speaking of the Words; except the Word Bastard, and for the rest, he pretended to mean them in another sense than they ordinarily bear, *viz.* Whoremaster, *i. e.* That Christ was Master of the Whore of *Babylon*, and such kind of Evasions for the rest. *Hale* said, That such kind of wicked blasphemous Words were not only an Offence to God and Religion, but a Crime against the Laws, State and Government: For to say, Religion is a Chear, is to dissolve all those Obligations whereby Civil Societies are preserved, and that Christianity is part of the Laws of *England*; and therefore to reproach the Christian Religion, is to speak in subversion of the Law. He was sentenced to stand in the Pillory in three several Places, to pay 1000 Marks, and to find Sureties for

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his

Buggery.

his good Behaviour during his Life. *Term.*
Hill. 27 & 28 Car. 2. B. R. Ventris Rep.
p. 393. Taylor's Case.

Buggery.

IT was resolved by the Judges, That Pollution and using of a Man upon his Belly Sodomitically without Penetration, was Buggery by Statute 25 H. 8. *car. 6. 7. Car. 1. Hutton's Rep. p. 115, 116. Lord Audley's Case.*

Certiorari

Certiorari.

After a *Certiorari* brought, and Tender of sufficient Sureties, according to Statute 21 *Jac.* 1. *ca.* 8. all the Proceedings of the Justices of Peace are *coram non judice* So resolved, *Term. Trin.* 15 *Car.* 1. *March. Rep.* p. 27. *Pl.* 63.

If a *Certiorari* be awarded to a Justice of Peace to certify an Indictment of Riot or Forcible Entry, or any other Indictment, where the Statute saith, That it shall not be certified without Bail be first taken; altho' the Party will not give Bail according to the Statute, yet the Justices ought to make a Return of the *Certiorari*. *Term. Hill.* 13 & 14 *Car.* 2. *B. R. Siderf. Rep.* 1. p. 70. *Pl.* 7.

Vide plus in Title *Bastardy*, &c.

E 2

Cheat

Cheating and Couzening.

S. Was indicted for couzening of *P.* for that *P.* being a Soldier under *H.* S. pretending that he had power to discharge Soldiers, took Money of *P.* to discharge him. *Term. Trin. 3 Car. 1. Latch. p. 202 Serlested's Case.*

If a Man cheats and couzens at play with Dice, the Person cheated may arrest him and carry him before a Justice of Peace, who is to bind him over to the Sessions, and there he is to be tried and punished: And if he brings an Action, he who arrests him may justify, as all the Court held, *Term. Mich. 7 Car. 1. Cro. Car. p. 234. Pl. 6 Holliday against Oxenbridge.*

J. F. a working Goldsmith, was indicted for falsifying Plate, and, by putting in too much Copper, made it in some pieces 2 *d.* in others 3 *d.* 4 *d.* 5 *d.* 6 *d.* 7 *d.* in the Ounce worse than it ought to be; and then corrupted one of the Essay-Master's Servants to help him to the old Marks of the Leopard's Head, and other Marks which are set on Plate when it is essay'd and found good; and with those Marks he marked his Plate at his own House, and so he sold it to the selling Goldsmiths, who did not mistrust it, because they saw it marked; For the Essay-Master is so curious, that if the Plate be the 4th part of a Farthing more of Alloy than it ought to be, they break it in pieces; and

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the old Marks ought always to be broken in pieces when new Marks are made. And because the Essay-Master had not caused those (11) Marks to be broken, he was turned out of his Office; and *J. F.* fined 100*l.* and adjudged to stand in the Pillory three Days, at three several Places, with a Paper in his Hat, declaring his Crime, and was forejudged of his Trade, that he should not use that Trade again as a Master-workman. At the Sessions at the Old Baily, December 7. 1664. 16 Car. 2. *Kelynge's Rep. p. 39. Joseph Habran's Case.*

Vide plus in Tit. *Falſe Tokens.*

E 3

Church

Church and Church-yard.

D. Was indicted upon the Statute 5 Ed. 6. ca. 4. for striking in St. Paul's Church-yard. And it was moved, That it being the Church-yard of a Cathedral Church, it was not within the Statute; but held by the Court, That it is within the Statute. *Term Pasch. 33 Eliz. Cro. Eliz. p. 234. Pl. 7. Dethick's Case. Leon. p. 248. Pl. 337. S. C.*

S. P. Title
Forcible En-
try.

C. was indicted for striking in a Church-yard, but was discharged, because it was *apud Generalem Sessionem Pacis apud Blandford*, and was not in *Com. præd.* tho' the County was in the Margin. *Term. Pasch. 40 Eliz. B. R. Cro. Eliz. p. 606. Pl. 4. Child's Case.*

P. was indicted for drawing his Dagger in the Church against *J. S.* without saying, That he drew it with Intent to strike *J. S.* for which cause it was holden to be void. *Term. Mich. 32 Eliz. B. R. Leon. Rep. pt. 2d p. 188. Pl. 234. Perchal's Case. Term. Trin. 12 Car. 1. Cro. Car. p. 464. Pl. 2. Cholmley's Case. S. P.* It must be drawn with an Intent to strike, or else it is not an Offence within the Statute.

Clerk of the Market.

THEY have nothing to do with any thing but Victuals, and therefore not with Candles. So resolved, *Term. Trin. Car. Lit. Rep. p. 296.* Case of the University of Cambridge.

Clerk of the Peace. Vide Custos Rotulorum.

Constable and Headborough.

HE is indictable for refusing to execute a Justice of Peace his Warrant, to apprehend one for a Contempt. *Hill. Term. 16 Jac. 1. Rolle's Rep. 2. f. 8.*

An Alderman of *London* chosen Constable at a Leet in *Essex*, discharged upon a *Certiorari*, because he is bound as Alderman to be present at *London* for the Government of the City. *Term. Trin. 16 Car. 1. Jones's Rep. p. 462. Pl. 2. Alderman Abdy's Case. J. C. Cro. Car. p. 585. Pl. 3.* The High Constable of the Hundred of *Wanstead* was discharged from being Collector of Money for the Poor of the Parish of *St. Peter Poor London*, during his Office of Constable. *Jones's Rep. 2. p. 46. Term. Pasch. 28 Car. 2. B. R.*

When a Felony is committed, the Constable or any other may arrest suspicious Persons. *Term. Pasch. 2 Ed. 4. f. 8. b. Pl. 20.*

If the Constable arrests a Felon and carries him to the County Gaol, and the Gaoler refuses to receive him, if the Constable lets him go, 'tis an Escape. *Hill. 10 H. 4. f. 7. a. Pl. 2.*

T. was indicted for not going before a Justice of Peace to take the Oath of an Headborough, to which he was chosen at a Leet. And the Indictment was quashed, because it did not appear that any Notice was given him to go before the Justice. *Term. Trin. 24 Car. 1. B. R. Style's Rep. p. 124. The King against Trigg.*

Constable and Headborough.

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C. was committed to Gaol by the Justices of Peace at the Sessions, till he should obey an Order of taking the Office of Constable upon him, which he refused to do, alledging, that he was not within the Liberty for which he was chosen. And all the Court held, That he was unjustly committed, because they ought not to have committed him, when he denied to be Constable, especially pretending that he was not within the Liberty; but should have caused him to be indicted upon his Refusal; and, if he was found to be within the Liberty, should have assessed a good Fine, and then committed him till he had paid it. *Term. Hill. 15 Car. 1. B. R. Cro. Car. p. 566. Pl. 4. Crawley's Case.*

An Indictment for not taking upon him and executing the Office of a Constable, to which he was chosen by the Leet. The Question was, Whether a Tenant in ancient Demesne was obliged to that Office? And the Court held that he was. *Term. Mich. 31 Car. 2. B. R. Ventris Rep. 1. p. 344.*

Upon a *Certiorari* to the Justices of Peace of the County of *Essex*, to certify the Order made concerning one S. the Order appeared to be, That upon Complaint, that at the Leet, S. was presented to be Constable for the Year ensuing, and the Steward had refused to swear him, and had received and sworn another to be Constable. And upon that the Justices, having found the matter true upon Examination, order'd that S. should serve the Office, and swore him according-

Constable and headborough.

cordingly. Exception was taken to this Order of the Justices, because they had intermeddled with a thing which was not within their Cognizance; for 'twas said, That the appointment of a Constable belongs to the Leet, and the Lord of the Leet (at the peril of the Forfeiture of his Leet) ought to take care that a Constable be there chosen, and that he may be by his Steward. But the Exception was disallowed by the whole Court, for the Election of a Constable properly belongs to the Homage. And altho' the Justices of Peace have not originally the making of a Constable, yet that is a matter of the Peace, which is within their Jurisdiction, and they may examine this matter in their Sessions. And as to the Swearing of the said Constable, any single Justice of Peace may do that. And the Order was confirmed, *Term. Trin. 34 Car. 2. B. R. Jones's Rep. 2. p. 212.* The King against Stephens.

Cottages

Cottages.

D. Was indicted for erecting of a Cottage. It was moved, That the Indictment was insufficient, for that the words of the Statute 31 *Eliz. ca. 7.* are, Shall willingly uphold, maintain and continue; and the Indictment is only, That he continued, and wants the Words voluntarily upheld. And 2. It did not appear that it was newly erected. The Indictment was quash'd, because, being a Penal Law, it was not pursued. *Term. Pasch. 3 Car. 1. B. R. Godb. 308. Pl. 470. Day's Case.*

An Exception was taken to an Indictment for erecting a Cottage contrary to the Statute, for that it was said, He erected a Cottage for Habitation, but did not say it was used or inhabited as a Cottage. But the Exception was not allowed, because the very erecting it is an Offence against the Statute. *Term. Trin. 23 Car. 1. B. R. Style's Rep. p. 33.*

J. S. was indicted upon the Statute of 31 *Eliz. ca. 7.* because he had erected a Cottage five Years last past, and had not allotted four Acres of Land, according to the said Statute *de terris mensurandis*, and had continued it ever since. This Indictment was held to be ill. 1. Because he ought to have been indicted within two Years. 2. Because it is not alledged, that he continued it voluntarily. 3. Because it is said to be
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by the Statute *de terris mensurandis*, and there is no such Statute. *Term. Mich. 18 Jac. 1. B. R. Cro. Jac. 1. 603. Pl. 30. John Stowe's Case.*

A Writ of Error was brought to reverse a Judgment in an Indictment for erecting of a Cottage, and not laying four Acres of Land to it. *Et ulterius jur', &c. presentant*, that the Defendant did continue it *contra formam Statuti*. Three Errors were assign'd. 1. In the Return, which is uncertain, for it was returnable *ad proximam Sessionem ubicunque*; whereas it should have been *ad proximam Generalem Sessionem Pacis*: *Sed non allocatur*, for one is as uncertain as the other. 2. 'Tis for erecting and continuing of a Cottage; but doth not say *pro Habitatione*; and 'tis no Offence unless it is inhabited; for the Statute was made to prevent the building of Cottages for the Habitation of poor People: *Sed non allocatur*; for if 'tis apply'd to any other use than a Dwelling-house, the Defendant must shew it, or otherwise it shall be intended to be built for Habitation. 3. 'Tis an Indictment for two Offences, *viz.* for erecting and continuing: 'Tis said, *presentat' existit*, That he did erect, &c. and then, about the middle of the Indictment, 'tis, *ulterius presentant*, that he did continue, and then concludes, *contra formam Statuti*. Now the Offences being several, and being divided by the Words *ulterius presentant, &c.* the Conclusion shall only go to the Offence last mentioned, which was the continuing, and not erecting, of the Cottage; 'Tis as distinct

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stin& as if it had been a new Indi&ment;
and therefore it doth not appear that the
Defendant was indicted for erecting a Cot-
tage: For which Reason the Indi&ment was
quash'd. *Term. Mich. 6 W. & M. B. R.*
Modern Rep. 4th pt. p. 315. The King and
Queen against Tarbridge.

Custos

Custos Rotulorum and Clerk of the Peace.

THE *Custos Rotulorum* of a County was displaced, and another constituted in his Room, to whom the Defendant, being Clerk of the Peace, refused to deliver the Rolls. He was indicted for this Misdemeanour, and found guilty, and thereupon he was removed from his Office; and he brought a *Mandamus* to be restored. And this matter being returned, a Motion was made to maintain the Return: And it was said, That a Clerk of the Peace was a Ministerial Officer to the *Custos*, and ought to deliver the Rolls to him at the end of every Sessions: 'Tis true, he has a more fixed Estate in his Office than the *Custos* hath, but still he is but his Deputy, and is to be removed by a Charge exhibited against him to the Justices of Peace in writing.

Chief Justice Holt said, That the Clerk of the Peace ought to make out all the Process, which cannot be done without the Rolls; when they are compleated, then he must deliver them to the *Custos*; but as long as they are in Process, they are to be with the Clerk of the Peace, and therefore it seemed reasonable the Clerk of the Peace should be restored: But the other three Judges were of a contrary Opinion. *Term. Hill. B. R. 6 W. & M.* The King and Queen against *Evans*, 4 *Modern Rep.* 31.

Chief

Custos Rotulorum, &c.

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Chief Justice *Holt* declared, That the Justices of Peace can discharge no Clerk of the Peace for a Fault appearing in Court without Articles in writing. *Term. Mich.* 3 *W. & M. B. R. Shower's Rep.* 282. King and Queen against *Evans*.

The *Custos Rotulorum* is to Name the Clerk of the Peace, but he is in by the Statute, and hath an Estate for Life in his Office, but removeable by the Justices for Misbehaviour. *Term. Trin.* 5 *W. & M. B. R. Shower's Rep.* *Harcourt* against *Fox*, from p. 516 to 537. *Modern Rep.* p. 167 to 174. *S.C.* and there it is said that the Judgment was afterwards affirm'd in Parliament.

By the Statute 1 *W. & M.* the *Custos Rotulorum* is to appoint and nominate the Clerk of the Peace (when the Place is void) who hath Power by that Act to execute it by himself or Deputy, for so long time only as he shall demean himself well, &c. The Earl of *Winchelsea*, who was *Custos Rotulorum* in *Kent*, did appoint Mr. *Owen* to be Clerk of the Peace, *durante beneplacito*, &c. and died. The Lord *Sidney* was made *Custos*, and appointed Mr. *Sanders* to be Clerk of the Peace. The whole Court gave Judgment, That by the Act the *Custos* being to nominate a Clerk of the Peace to execute that Office for so long time only as he shall well demean himself, if he appoint him in any other manner, he is no Clerk of the Peace. *Term. Trin.* 6 *W. & M. B. R. Modern Rep.* 293. The King and Queen against *Owen*.

Deer-

Deer-stealing.

BY the Statute 3 & 4 W. & M. ca. 10. no Person is unlawfully to course, hunt, take in Toyls, kill, wound, or take away any Red or Fallow Deer, in any Forest, Chase, Purlicu, Paddock, Wood, Park, or other Ground inclosed, where Deer are, have been, or shall be usually kept.

One was convicted before a Justice of Peace for Deer-stealing; and, because it did not appear by the Conviction that the Deer was in a place inclosed, but open, the Conviction, upon Motion, was quash'd. *Term. Mich. 9 W. 3. B. R. The King against Pennoyer.*

Divine Service.

A. Was indicted in S. upon Stat. 1 *Eliz.* ca. 2. for not coming to Church twelve *Sundays* together ; which was removed into the King's Bench, and Exceptions taken to it. 1. That the Statute is, That all Inhabitants within the Realm, &c. and it was not averred that *A.* was an Inhabitant: But disallowed: For if it were otherwise, it ought to be shewn on the Defendant's part. 2. That by 28 *Eliz.* 6. none shall be impeached for such Offence, if he be not indicted next Sessions ; and it appears by the Indictment, that the Offence was almost a Year before the Indictment, and in the mean time many Sessions were or ought to have been: But disallowed: For perhaps there was not any Sessions. 3. That *A.* was indicted *coram A. B. & sociis*, Justices of Peace, and doth not name them particularly: But disallowed: Because it doth not appear that there were any other Justices there, and what were their Names. 4. That the Words of the Statute are, Ought to abide in the Church till the end of Common Prayer, Preaching, or other Service of God, in the Disjunctive, and the Indictment was in the Conjunctive: But disallow'd: For altho' the Words are in the Disjunctive, yet a Man cannot depart so soon as the Service is ended, if there be Preaching, but he ought to continue there for the whole Time.

F

B. R.

Divine Service.

B. R. Term. Mich. 3 Jac. 1. Godb. Rep. 148. Pl. 191. Ann Mannock's Case.

An Action of false Imprisonment was brought against three Justices of the Peace in T. who justify'd the Imprisonment by reason of the Statute of 1 Mar. Sess. 2. ca. 3. That it should not be lawful for any maliciously and contumeliously to molest and disquiet any Person or Persons who are Preachers, or after should be Preachers. The Plaintiff demurred, and two Exceptions were taken to the Plea in Justification. 1. Because the Words of the Statute were misrecited, because the Words are in the Disjunctive, maliciously or contumeliously. And the Opinion of the Court was, That where the precedent and subsequent Words Disjunctive are all of one Sense, That the Word, Or, is to be taken Copulative; but where they are of divers Natures (as by Word or Deed) it is otherwise. 2. That where the Words were (by the greater part of the Justices) the recital was (by the better part of the Justices;) notwithstanding which the Justification was allow'd., and Judgment for the Justices against the Plaintiff. *B. R. Term. Hill. 11 Jac. 1. Godb. Rep. p. 246. Pl. 343. Cross and Stanhope's Case.*

That part of the Statute 1 Mar. ca. 3. which concerns Disturbance in Preaching, is not repealed by Statute 1 Eliz. But as to Disturbance of a Minister in his publick Prayer, it is repealed. So agreed, *Term Hill. 22 Car. 1. B. R. in Doctor Bruc's Case.*

Case, *Aleyn's Rep.* 50. But *Term. Trin.* 33 *Car.* 2. *B. R.* it was resolved, That the Statute of *Queen Mary* extends to the Divine Service now established; and that the Word, Such, shall not be referr'd to the Quality of the Service, but to the Authority establishing it. 2 *Jones's Rep.* 159. *Paul Moon's Case*, brought up by *Habeas Corpus* from *Bristol*.

S. was indicted at the Quarter-Sessions in *D.* for using other Prayers in the Church, and in another manner than mentioned in the Book of Common Prayer, and concluded *contra formam Statuti*. He was found guilty and fin'd 100 Marks; And upon a Writ of Error brought, it was argued for the Plaintiff in Error, That this Indictment was not warranted by any Law; and the Verdict shall not help in the Case of an Indictment, for all the Statutes of Jeofails have left them as they were before. Now the Fact, as laid in the Indictment, may be no Offence, because to use Prayers in other manner than enjoined by the Book of Common Prayer, may be upon an extraordinary Occasion, and so no Crime. But if this should not be allowed, the Justices of Peace have not Power, in their Sessions, to enquire into this matter, or if they had Power, they could not give such a Judgment, because the Punishment is directed by the Statute. And of this Opinion was the whole Court. The Chief Justice said, That the Statute of 3 *Eliz.* ca. 2. could have no influence upon this Case, because another Form is now

Divine Service.

injoined by later Statutes; but admitted, That Offences against that Statute are inquirable by the Justices of Peace.

The Indictment ought to have alledged, That the said S. used other Forms and Prayers instead of those enjoined, which were neglected by him; for otherwise every Parson may be indicted who useth Prayers before his Sermon, other than such which are required by the Book of Common Prayer, *Term. Pasch. 1 Jac. 2. B. R. 3 Modern Rep. 78, 79. The King against Sparks.*

Duelling.

D. And C. were indicted for a Misdemeanour, which was, That D. had challenged one by way of Duelling, and sent it by C. to the Party challenged, C. knowing the matter. For this they were fined each 100 *l.* committed for a Month without Bail, to make such Recantation within that Time as the Court should direct, and to be of the good Behaviour for seven Years. *Term. Pasch. 16 Car. 2. B. R. 1 Siderf. 186. Pl. 10. The King against Darcy and Collins. 1 Keb. Rep. 694. Pl. 11. S. C.*

F 3

Escape

Escape.

Justices of Peace have Authority to enquire in their Sessions of all manner of Escapes of every Person arrested and imprisoned for Felony. Statute 1 *Rich. 3. ca. 3.*

To let a Person go, after he is arrested for Felony or Larceny, is a voluntary Escape: But if a Felon be in an House, and one who hath a Warrant against him be in the Street, and calls to him, and tells him, that he doth arrest him, this is no Arrest, and his getting away is no Escape. 27 *Ed. 3. Lib. Affix. Pl. 9.*

If a Man receives a Felon, knowing him to be so, and suffers him to escape, this is no Escape in him, because he never was arrested. *Term. Hill. 9 H. 4. f. 24. Pl. 3.*

If a Man escapes out of Prison, who is arrested for Felony or other Misdemeanour, and is not freshly pursued, and taken again before the Pursuer loseth sight of him; this is an Escape, tho' he be taken again before he lost sight of him. So adjudged, 8 *Ed. 3. Fitz. Abr. No 400.* and *Term. Hill. 22 Ed. 3. Fitz. Abr. No 236.*

If one escapes, and is pursued and taken and carrying to Gaol, if the Pursuer kills him in bringing him back, tho' he never lost sight of him, yet it is an Escape. 3 *Ed. 3. Fitz. Abr. Tr. Coron. No 328.* and *No 346.*

If a Gaoler give his Prisoner leave to go to another Town and to come again, and he goes, this is an Escape. *Term. Pasch. 22 Ed. 3. Fitz. Abr. No 242.* The same, if he gives him Liberty to go into the same Town, and he goes into another, 8 *Ed. 2. Fitz. Abr. No 431.*

If the Sheriff arrests one for Felony, and he returns a *Cepi corpus*, and hath not the Body at the Day, this is an Escape. So adjudged 40 *Ed. 3. Lib. Assiz. Pl. 42.*

If one be murdered or slain in a Town in the Day-time, and the Murderer or Manslayer escape, tho' in the Night; this is an Escape in the Town. 3 *Ed. 3. Fitz. Abr. No 293, and No 302.*

If the Constable arrests a Felon, and carries him bound to Gaol, and the Gaoler will not receive him, if the Constable lets him go, 'tis an Escape. *Term. Hill. 10 H. 4. f. 7. a. Pl. 2.*

Estreats.

AN Estreat of divers Fines upon several Indi&ments at the Quarter-Sessions for several Riots, was sent into the Exchequer, and the Estreat mentioned not for what Offences the Fines were imposed, and the Records of the Indi&ment were remov'd into the Crown-Office by *Certiorari*. Chief Baron *Tanfield* said, The Estreat was insufficient, and no Process ought to be sent out upon them, because they do not mention the Quality of the Offence, for which the Fines were imposed. *Trin. 7 Jac. 1.* In the Exchequer.. *Lane's Rep. 55.*

Evidence.

RESolved by the Judges, That in Case of a Common Person, between Party and Party, a Woman cannot be a Witness against her Husband, according to the Opinion of *Coke's 1 Inst. f. 6. b.* But between the King and the Party, upon an Indictment, she may, altho' it concerns the Wife her self, as she may have the Peace against her Husband. The Lord *Audley's Case*, 7 *Car. 1.* *Hutton's Rep. 115, 116.*

Mary Griggs was indicted upon Statute 1 *Jac. 1. ca. 11.* for that she had married a second Husband, the first being alive. The first Husband was produced as a Witness to prove the first Marriage. But the Court refused to receive his Testimony; and said, That a Wife could not be admitted to give Evidence against her Husband, nor the Husband against his Wife, in any Case, except Treason, because it might occasion implacable Dissension, according to 1 *Inst. f. 6. b.* And they denied the Lord *Audley's Case* to be Law. *Term. Mich. B. R. 12 Car. 2.* *Raymond's Rep. 1. Mary Grigg's Case.*

It was holden by the Court, That where there is Cause of Action against *J. S.* and the Action is brought against divers others, against whom there is no Cause of Action, and that is by Covin to take away their Evidence; if this appear upon the Evidence, the Justices may and ought to receive their Testimony :

mony. And so it was done in the Exchequer against one *Dymoke* and others, *Term. Mich. 24 & 25 Eliz. Savil's Rep. 34 Pl. 81.*

It was said by the Court, That if either of the Parties to a Trial desire, That a Juror may give Evidence of something of his own Knowledge to the rest of the Jurors, that the Court will examine him openly in Court upon his Oath, and he ought not to be examined in private by his Companions. *Term. Mich. 1650. Style's Rep. 233.*

Where the Issue was, Whether the Place where a Man is robb'd be within the Hundred of *W.* it was resolved, That if one hath Lands, but doth not inhabit in the said Hundred, but hath let them, he may be a Witness; but a Man who inhabits there, altho' he pays no Taxes, shall not be a Witness, because he is compellable to Watch and Ward, *Term. Mich. 1657. 2 Siderf. Rep. 2. Tho. Oliver* against the Hundred of *Wallington* in *Surrey.*

A Conviction was certified of one for carrying of a Gun, not being qualified according to the Statute, where the Words in the Statute are, Upon due Examination and Proof before a Justice of Peace. The Court resolved, That that was not intended by Jury but by Witnesses, and no Writ of Error lies upon such Conviction. *Term. Trin. 21 Car. 2. B. R. 1 Ventris 33.*

J. B. was indicted upon the Statute *3 H. 7. ca. 2.* for the forcible taking away and marrying one *Lucy Ramsey*, of the Age

of fourteen Years, and having 5000 *l.* Portion. The Court *seriatim* delivered their Opinions, That she was a good Witness. 1. For that there was one continuing Force upon her from the beginning till the Marriage; wherefore whatsoever was done whilst she was under that Violence was not to be respected. 2. As such Cases are generally contrived, so heinous a Crime would go unpunish'd, unless the Testimony of the Woman, tho' marry'd, should be received: And he was found guilty and hanged. *Term. Trin. 25 Car. 2. B. R. 1 Ventris p. 243. John Brown's Case.*

A Person who has been burnt in the Hand is to be admitted to give Evidence, as well in Criminal as in Civil Causes. So it was held by Chief Justice *Hyde*, Judge *Kelynge*, and *Wylde* Recorder, at the Sessions at the Old Baily, 7 Dec. 1668. 16 Car. 2. *Kelynge*, 37.

In a Trial about repairing Highways, no Person can be a Witness who is chargeable to the repairing of the Way; but those who are not chargeable are good Evidence. *Term. Hill. 14 & 15 Car. 2. 1 Keb. 435. Pl. 23. The King against the Inhabitants of Somersham.*

Examination,

A Justice of Peace cannot commit till further Examination, for longer Time than three Days. *Term. Pasch. 2 Ed. 4. f. 8. b. Pl. 20. Term. Hill. 43 Eliz. Rot. 1831. in C. B. Cro. Eliz. 829, 830. Pl. 35.*

S: H: 4: cap: 10:

False

False Tokens.

W Was indicted at a Sessions for getting the Horse of another Man into his Possession, by using another Man's Name and a False Token. Exceptions were taken to this, 1. That the Indictment doth not say it was *contra Statutum*. But the Court said, It need not, because it is an Offence at Common Law. 2. *Rolle*, Chief Justice, took this Exception, That the Indictment was, that the Defendant did the Fact *nuper*, and that is so general a Word, that no answer can be given to it: And for that the Indictment was quash'd. *Term. Mich. 24 Car. 1. B. R. Style's Rep. 145.* The King against *Wood*.

T. A Merchant was indicted upon the Statute of 33 H. 8. ca. 1. of false Tokens, because that he by a false Note in the Name of J. S. obtained into his Hands a Wedge of Silver of 200 l. value. Exception was taken to the Indictment for variance therein, in several Words, from the Statute: But because there was not any recital nor mis-recital of the Statute, but it was only an Inducement to the setting

Falſe Tokens.

ring down thereof, and not in any point material, the Court reſolved it to be good enough, and adjudged him to ſtand up on the Pilory at two Places, pay 500*l.* be impriſoned during the King's Pleaſure, and bound with good Sureties for his good Behaviour, *Trin. Term. 15 Car. 1. B. R. Cro. Car. 564. Pl. 10. Terry's Caſe.*

Vide Title **Cheating**, ante.

Felony

Felony by Common Law.

IF the Goods stoln do not exceed the value of 12*l.* it is no Felony, but petty Larceny, for which the Offender shall be punished at the Discretion of the Justices, shall forfeit his Goods, but not suffer Death. *Hill. 16 Jac. 1. 2 Rol. Rep. 78.*
Term. Mich. 27 H. 8. f. 22. b. Pl. 17. 8 Ed. 2. Fitz. Abr. Tit. Coron. f. 221. N^o 430 & 457.

One bargains with a Carrier to carry certain Bales of Goods to S. who takes them, and carries them to another Place, and there breaks open the Bales, and takes Goods out of them, and converts them to his own Use: Tho' he came by these Goods lawfully, and by the Delivery of the Party, yet this was adjudged Felony. *Kelynge's Rep. 24, 81, 82.*
Term. Pasch. 13 Ed. 4. f. 9. a. Pl. 5.

If any Person at several Times steals several parcels, which together make above the value of 12*l.* this is Felony. *Fitz. Abr. Tit. Coron. N^o 415.*

If two, three or more do together steal to the value of more than 12*l.* it is Felony in them all. *Fitz. Abr. Tit. Coron. N^o 404.*

The Jury may find the Goods of less value than 12*l.* and so convict the Prisoner of Petty Larceny only. *Hetley's Rep. 66. Bromley's 18 Ed. 3. Lib. Assiz. Case. Pl. 14. 22 Ed. 3. Lib. Assiz. Pl. 39.*

Felony by Common Law.

Co 3 Inst. Pl.
108.

A Lodger in an Inn did rise in the Night, and carried Linen, &c. out of his Chamber into the Hall, with an intent to steal them, and went to the Stable to fetch his Horse, and the Hostler took him therewith. This was adjudged Felony. 27 Ed. 3. Lib. Affix. Pl. 39.

If a Shepherd steals Sheep, or a Butler Plate, which are delivered to them; this is Felony. Term. Mich. 3 H. 7. f. 12. b. Pl. 9. Co. 3. Inst. 108.

If a Servant imbezils his Master's Goods, he having neither general nor special Property in them, it is Felony. Term. Mich. 29 & 30 Eliz. Owen's Rep. 52. Bliss against Holman, Moor's Rep. 248. Pl. 392. S. P.

A Man may be indicted for stealing Goods out of a Chapel, calling them in the Indictment *bona capellæ*, out of a Parish Church *bona Parochianorum*. Term. Mich. 7 Ed. 4. f. 14. b. 15. a.

Kelynge's Rep
31. Post. Tit.
Felony.

If a Wife steals Goods with her Husband, or by the compulsion or command of her Husband, this is no Felony in her. 27 Ed. 3. Lib. Affix. Pl. 40.

If a Woman, alone by her self, steals Goods, or receives Felons or stolen Goods into her House, or locks them up in a Chest, knowing them to be so, her Husband not knowing thereof; This is Felony in the Wife. Term. Pasch. 15 Ed. 2. Fitz. Abr. Tit. Coron. No 383.

If an Infant steals Goods before he is 7 Years of Discretion, this is not Felony. Otherwise after. Term. Mich. 35 H. 6. f. 11.

Felony by Common Law.

81

11. Pl. 18. *Vide Tit. Murder*, more of this Matter, and of Ideot and Lunatick.

To burn a Barn in the Night, which is adjoining to the Dwelling House, is Felony. So adjudged, *Term. Mich. 11 H. 7. f. 1. b. Pl. 3.*

A Felon was condemned before the Justices of Peace at their Sessions at Salisbury; and as the Sheriff was carrying him to Execution, he was rescued; This is Felony, and was so adjudged, *Term. Hill. 1 H. 7. 6. a. Pl. 2.*

If a Felon be apprehended, and afterwards escapes, it is Felony in him who lets him escape. *Term. Mich. 9 H. 4. f. 24. b. Pl. 3.*

If A. delivers Goods to B. and C. steals them from B. there is such a Property in B. as will maintain an Indictment against C. *Term. Mich. 21 H. 7. Pl. 7.*

It is not Felony to take savage Beasts, who are wild, as Deer, Hawks, &c. *22 Ed. 3. Lib. Affiz. Pl. 95.*

If any Person takes young Pigeons out of a Dove-house, or Fish out of a Pond, or Trunk, this is Felony. *Term. Pasch. 18 Ed. 4. f. 8. a. Pl. 7.*

Stealing a Peacock, adjudged to be Felony. *Term. Mich. 18 H. 8. f. 2. a. Pl. 11.*

If a Man cuts down Trees, and carries them away, that is not Felony: But if Trees be cut down, and afterwards stoll, that is Felony. *12 Ed. 3. Lib. Affiz. Pl. 32. Term. Trin. 22 Ed. 3. Fitz. Abr. No. 256.*

G

The

Felony by Common Law.

The stealing of Writings which concern an Inheritance, is not Felony. So adjudged, *Term. Mich. 49 H. 6. f. 14. a. b. Pl. 9, 10.*

The taking away of Treasure found, is no Felony. *22 Ed. 3. Lib. Assiz Pl. 99.*

Taking and carrying away Wreck of Sea and Waif and Stray, is no Felony. *Mich. Term. 22 Ed. 3. Fitz. Abr. Tit. Coron. N^o 265.*

Robbery is Felony, tho' the thing taken be not of greater value than 1*d.* *Term. Hill. 14 Ed. 6. Fitz. Abr. Pl. N^o 115.*

It is no Robbery, unless the Party be put in fear. *Term. Trin. 5 Eliz. f. 229. b. Pl. 30.*

If a Man be threatened with Death, and compelled to swear that he will bring such a Sum of Money, and he accordingly brings it: This is Robbery in those who compelled him to swear. *Term. Pasch. 44 Ed. 3. f. 14. b. Pl. 97.*

One was indicted of Burglary, for breaking into a Church in the Night, to rob the Parishioners, but took nothing; yet this was adjudged Burglary. *Term. Pasch. 1 Mar. Dyer f. 99. a. Pl. 58. Poph. Rep. 42.*

So if he breaks into a Mansion-House tho' he takes nothing. *22 Ed. 3. Lib. Assiz Pl. 39. 1 And. 302. Pl. 311.*

If a Man hath a Mansion-House, and his Family are all out for some part of the Night, and when they are absent, he breaks the House to commit a Felonious Act, that is Burglary. *Term. Hill. 28 Eliz.*

Kelynge Rep.
67. S. P.

B. R. Co. Li. 4. 40. a. Brook's Case. Popbam 42.

If a Man have two Houses, and inhabits sometimes in one, and sometimes in the other, if the House where he doth not inhabit, be broken in the Night, with an intent to steal any thing out of it, this is Burglary. So resolved *Term. Trin. 36 Eliz.* by all the Judges, saith *Popb. Rep. f. 12.* and *Moor's Rep Term. Pasch. 36 Eliz. 660. Pl. 903. Kelynge's Rep. 52. & 67. S. P. Co. Li. 4. f. 40. a.* saith it was so resolved by *Popbam* and all the Justices, *Hill. Term. 8 Eliz.* and *3 Co. Inst. 64.*

The Justices of Peace may enquire of, hear and determine all Murders and Felonies within the Verge; for that their Authority and Jurisdiction is general throughout the whole County. *Term. Mich. 33 & 34 Eliz. Co. Li. 4. 46. b. 47. a.*

A. is in Bed with his Wife, and *B.* his apprentice, who lay in another Chamber in the same House, drew the Latch of the Chamber-door, where *A.* was in Bed, and entered the Chamber, and with a Hatchet (with intent to Murther *A.*) strike and grievously wound him, and gave him fifteen Wounds on the Head and other parts of his Body. This was resolved to be Burglary. *Term Pasch. 15 Jac. 1. Hutton's Rep. 20. Edmond's Case, Kelynge's Rep. 67. S. P.*
If a Man be pursued as a Felon, and he flies, and waves his own Goods, they are forfeit as much as if they had been stoln. *57 H. 8. New Cases, f. 69. a. Pl. 305.*

Felony by Common Law.

A Man is arraigned of Felony, and acquitted; but it is found that he fled for the Felony: He shall not lose his Goods which he had at the time of his flying, but at the time of the Acquittal. 3 *Ed. 3. Fitz. Abr. Tit. Coron. No 296, Br. Abr. Tit. Relation No 31. Goldsb. Rep. 135. Pl. 35.*

At the Sessions of the Peace in *Com' Berks Mich. 31 Eliz. T. N.* was indicted for feloniously stealing some Apparel. Upon the Evidence it appeared, That he stole the Goods by Robbery on the Highway in another County, and the Goods were taken up on him in the County of *Berks*. And the Jury found him guilty to the value of 10*l.* which is but Petty Larceny: But the Justice doubting whether he ought not to be executed upon the Statute 25 *H. 8.* the Judges were advised with, and were of Opinion, That he should be only whip'd. *Mour Rep. 550. Pl. 739.*

One hath a Shop in the Dwelling-House of another, and he who had the Shop work'd therein in the Day, but never lodged there, and yet he had a House out of the Shop to the Street. This Shop was broken in the Night, and divers Goods stolen out. Resolved by Chief Baron *Tanfield* and Judge *Hutton*, at the Assizes at *Winchester* 16 *Jac. 1.* That this was not Burglary, but ordinary Felony. *Hutt. Rep. 33. Kelyng Rep. 84. S. P.*

It is holden, That where a Stable is in an House, which is inhabited as parcel of the House, and a Man breaks into

Stable in the Night, to the intent to rob; this is Burglary tho' he takes nothing, 2 Ed. 6. Br. Abr. Tit. Coron. N^o 18S.

One *W. H.* had digged up the Graves of three Men and one Woman in the Night, and taken away their Winding-sheets, and buried them again. Resolved by all the Judges, That the Property of the Sheets remained in the Owner, not the dead Person, but the Person whose they were, when they were used for that purpose. And *W. H.* was indicted, and found guilty of Petty Larceny for stealing one of the Sheets, and of Felony for the other three, for which he had his Clergy; and was whip'd for the Larceny. 11 & 12 Jac. 1. 12 Co. Li. 113. *Maine's Case.*

If one breaks the Glass of a Window of a Mansion-House, and with Hooks draws out Goods, and steals them, if it be done in the Night, it is Burglary. But if Thieves in the Night come to a Mansion-House, and some Person opens the Door, and one of the Thieves, after the Door is open, shoots with intention to kill the Person who open'd the Door, and misseth him, but breaks a Hole in the Wall of the other part of the House; this is not Burglary. In the Night, one who intended to kill another, broke a Hole in the Wall of the House, and shot and kill'd; this is Burglary. 1 And. 114. Pl. 159. *Hill. Term.* 26 Eliz.

By the Law, at this Day, under the Word (Felony) in Commissions, is included Petit Treason, Murder, Homicide, burning of Houses,

Felony by Common Law.

Houses, Burglary, Robbery, Rape, &c. Chancemedley, *Se defendendo*, and Petit Larceny. 1 Co. Inst. f. 391. a. and in *March. Rep.* 214. Pl. 250. asserted by *Hale* to be Law in *Richibie's Case*, *Term. Trin.* 18 Car. 1.

The Court agreed, That it is Felony to take Pigeons out of a Dovecoat. *Hesley's Rep.* 147. *Flower* against *Vaughan*.

Wray, *Anderson*, and Sir *Thomas Gawdy* held, That an Indictment was not good, which was brought for breaking into a House and stealing Goods and Money, *Felonice & Burglariter*, because it was not laid to be done in the Night. The Man was indicted at the Quarter Sessions in *Essex*, *Term. Pasch.* 25 Eliz. *Savil's Rep.* 47. Pl. 100.

A Man may be indicted from stealing from a certain Person unknown. *Term. Trin.* 12 H. 7. f. 25. a & b.

T. C. and *J. C.* were indicted for robbing *W. P.* and also for Burglary in breaking the House of *W. P.* in the Night, upon this Case, *J. C.* was a Lodger in the House of *W. P.* and knowing that he had Plate and Money to a good value, he conspired with *T. C.* and one *J. H.* and *G. L.* and they three contrived, that one of the three should come as Servant of the other to hire Lodgings there for his Master and another Gentleman: And *J. C.* told them That *W. P.* was one who constantly kept Prayers every Night, and they could not have so good an Opportunity to surprise him, as to desire to join in Prayers with him

and at that Time to fall on him and his Maid, there being then no other Company in the House: And accordingly one of them came on *Saturday* in the Afternoon, and hired Lodgings there, pretending it to be for his Master and another Gentleman of very good quality: And about eight a Clock at Night they all came thither, two of them being in very good Habit; And when they were in their Chamber they sent for Ale, and desired *W. P.* to drink with them, which he did: And while they were drinking *J. C.* came into his Lodgings, and they hearing one go up Stairs, ask'd who it was, and *W. P.* told them, it was an honest Gentleman, one *Mr. C.* who lodg'd in his House; and they desired to be acquainted with him, and that he might be desired to come to them; and thereupon *W. P.* sent his Maid to let him know the Gentlemen desired to be acquainted with him; to which *J. C.* sent word, it was late, the next Day was the *Sabbath*, and he desired to be private: And thereupon those Persons told *W. P.* they had heard he was a Religious Man, and used to perform Family-Duties, in which they desired to join with him; at which *W. P.* was very well pleased that he had got such Religious Persons, and so called to Prayers; and while he was at his Devotion, they rose up and bound him and his Servant, and then *J. C.* came to them, and shewed them where his Money and Plate lay, and they ransack'd the House, and broke open several Doors and Cupboards fix'd to the House. *Kelynge,*

Vide Far's
Case infra.

Wylde and *Howel* were of Opinion, That the Entrance into the House being gained by Fraud, with an intent to rob, and they making use of this Entrance, thus fraudulently obtained, in the Night-time, to break open Doors, &c. was Burglary within the Reason of *Far's* Case and *Lemot's* Case, *supra*, at the Sessions at the Old Bailey 10 October 1666. 18 Car. 2. *Kelynge's* Rep. 62, 63. *Thomas Cassy* and *John Cotter's* Case.

If one come into *Smithfield*, or any Fair or Market, to buy a Horse, and cheapen one, and the Owner gives him leave to take the Horse and ride him to try his Paces, and he takes the Horse and rides quite away with him; this is Felony. *Kelynge's* Rep. 81.

Indictment against Defendant *quia emit vel recepit* stoln Goods, knowing them to be stoln. Indictment quash'd, because in the Disjunctive, (*vel*) instead of (*et*) and therefore uncertain.

F. being a Solicitor, had obtained a Judgment against the Casual Ejector in C. B. upon which he sued out an Execution: And the Sheriff's Bailiffs with him broke open the House, where there were several Goods of great value, and he took the Woman to whom the House and Goods did belong, and required of her Special Bail, and for want of it carried her to *Newgate*, and then *F.* took away the Goods. And *F.* being indicted of Felony for this, and it appearing upon the Evidence, before the Chief Justice, and Justice *Kelynge*, and others. That *F.* did this with intent to take the Goods,

Goods, and had no colour of a Title to the House for his Client, he was found guilty of Felony and hang'd. *Term. Pasch. 17 Car. 2. Siderf. Rep. 254.* The King against *Far. Kelynge's Rep. 43. S. C.*

H. B. was indicted for breaking up a Chamber in *Somerset-House*, and the Indictment laid it to be *Dom' Mansional'* of the Person who lodged in it. It was agreed by Chief Justice *Bridgman* and *Kelynge*, That the Indictment was not good, because all *Somerset-House* is one entire House. So for *Whitehall*; and differs from the Case of the Inns of Court, where every Gentleman hath a several Interest, and therefore there every several Chamber is *Dom' Mansional'* of the Person who hath the Interest. *14 Oct. 14 Car. 2. at Newgate Sessions. Kelynge's Rep. 27. Henry Burges's Case.*

J. J. was indicted for stealing a Copper; and upon the Evidence it appeared, That the Copper was fix'd to the Freehold, and he broke it up and carried it away. This is no Felony, and he was acquitted, *20 Apr. 16 Car. 2. At Newgate Sessions, by Chief Justice Hyde, Judge Kelynge, and Wylde. Kelynge's Rep. 29. John Joiner's Case.*

Breaking a House in the Day-time and taking of Goods, and removing them from one place to another in the same House, with an intent to steal them, is Felony; for by this taking them, he hath the possession of them, and that is Stealing and Felony. Resolved by all the Judges, *13 June, 16 Car. 2. Kelynge's Rep. 31. Clement Simson's Case.*

Huf.

Felony by Common Law.

Husband and Wife commit Larceny or Felony together, it is no Felony in the Wife ; for the Wife being together with the Husband in the act, the Law supposeth the Wife doth it by Coercion of the Husband. Resolved by all the Judges, 13 June, 16 Car. 2. *Kelynge's Rep.* 31.

A Silk-Throwster had Men come to work in his House, and delivered Silk to one of them to work, and the Workman stole away part of it. Agreed by *Hyde*, Chief Justice, *Kelynge*, and *Wylde*, That it was Felony, notwithstanding the Delivety of it to the Party; for it was delivered to him only to work, and the entire Property remained still in the Owner. At the Sessions in the *Old Baily*, 12 Oct. 1664. 16 Car. 2.

F. J. was indicted for stealing the Goods of *M. B.* and upon the Evidence it appeared, that the Goods were not *B's*, but he was a Carrier, and they were stoln from him in his Journey. Agreed by Chief Justice *Hyde*, Judge *Kelynge*, and *Wylde* Recorder, That the Indictment was well enough ; for tho' he had not the absolute Property in the Goods, yet he had a possessory Property : And so the Indictment was good, either for stealing the Goods of the Carrier, or of the right Owner. At the Sessions at the *Old Baily*, 7 December 1664. 16 Car. 2. *Kelynge's Rep.* 39. *Francis Trollop's Case.*

Thieves came with intent to rob *L.* and finding the Door lock'd up, pretended they came to speak with him ; and thereupon a Maid-servant open'd the Door, and they came

came in and robb'd him: This being in the Night, was adjudged Burglary; for their intention being to rob, and getting the Door open by a false pretence, was *in fraudem Legis*, and Burglary, tho' they did not actually break the House; for this was in Law an actual breaking. As if Men pretend a Warrant to a Conitable, and bring him along with them, and under that pretence rob the House in the Night. *Kelynge's Rep. 42. Le Mote's Case.*

E. P. was in the place where the Prisoners used to stand at the Gaol-Delivery, who was in for Murder, for which he had afterwards Judgment; and while he was there, one *J. C.* being in very good Cloaths, went in thither, under colour to see him, and watching the time when the Keepers were busy, he opened the little Door and went out, and *E. P.* followed him, and the Keeper of the outward Door not knowing them, opened that to them, and they both went together out of the Yard: But the Keepers presently missing the Prisoner, made after them, and being told which way they run, overtook them and brought them back: and *J. C.* was indicted for Felony for rescuing, *E. P.* being indicted for Murder: And upon the Evidence it was sworn, That after they were taken *J. C.* said, he had done nothing but what he ought to do to help away his Friend, who was in danger of his Life: And on this Evidence he was found guilty of the Felony. 3 Apr. 1665. 17 Car. 2. At the Sessions at the Old Baily, before Chief

Felony by Statute Law.

Chief Justice *Hyde*. Judge *Kelynge*, and Recorder *Wylde*. *Kelynge's Rep.* 45.

Felony by Statute Law.

A Servant receives Money upon an Obligation, or upon Sale of Wares, and goes away with the Money ; not Felony within the Statute 21 *H.8. ca.7.* because he had not the Money by the delivery of his Master : But if he had the Money by the delivery of his Master, or of another Servant of his Master's, and goes away with it, so as it be to the value of 40 s. this is Felony : But not, if he goes away with a Bond. Resolved, *Term. Mich. 25 H. 8. Dyer's Rep. f. 5. a. b, Pl. 4.*

Three were indicted for conspiring to enter into *Hide-Park*, and for entering it, and there hunting, killing, and carrying away the King's Deer : This is Felony by 1 *H. 7. ca. 7. Mich. Term. 17 Jac. 1. 2 Rolle's Rep. 120. Roger Wormall, Rowland Tristram, and Thomas Banck's Case.*

M. was indicted upon 1 *H. 7. ca. 7.* for hunting in *Horn-Park*, one of the King's Parks. The Indictment was, 1. For hunting and killing a Deer at eleven a Clock at Night. 2. For that he being examined before a Justice of Peace, denied it. *Montague*, Chief Justice, said, That there are four Things requisite upon this Statute to make it Felony. 1. Information must be given of this Offence to a Justice of Peace. 2. He must make out his Warrant. 3. He must examine concerning the Offence. 4. The

Felony by Statute Law.

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4. The Offender must deny it. *Term. Mich.*
17 *Jac. 1. 2 Rolle's Rep. 133. Mauklen's Case.*

Tho' the Offence of hunting in a Park be made Felony, yet it may be made but a Trespass if the Party pleaseth. *Term. Mich.*
33 *H. 8. Dyer f. 50. a. Co. 3 Inst. 78.*

A. and B. were indicted, for that they at twelve a Clock at Noon broke open Domus Mansionalem of H. A. in the Temple, no Person being in the House, and stole 40 l. The manner thus: A. went up a Ladder, enter'd the Chamber of H. A. and took away the Money, and B. held the Ladder, and saw A. get into the Chamber, and was assisting and helping him, and took part of the Money. Adjudged Felony without Clergy in A. within Statute 39 Eliz. ca. 15. but not in B. and that Chambers in the Inns of Court and Chancery, are Dwelling-Houses within the Act of Parliament, Term. Trin. 13 Car. 1. Cro. Car. Evans and Finch's Case. S. C. Jones 394.

One receives Press-money to serve the King in his Wars, and is in the King's Wages, and with others, is delivered to a Conductor to be brought to the Sea-side, and withdraws himself and runs away without Licence. Agreed by all the Judges, but *Croke, Yelverton, and Hutton*, That this is Felony, and triable before the Justices of Peace of the County where he is taken, by
7 *H. 7. ca. 1. 3 H. 8. ca. 5. Term. Mich.*
3 *Car. 1. Hutton's Rep. 134, 135. S. P.*
2 *Andersf. Rep. 171. Pl. 89. Term Pasch.*
43 *Eliz. Agreed by all the Judges to be Law.* It

Felony by Statute Law.

It is not Felony within the Intent of Statute 3 *H. 7. ca. 2.* made against stealing Maid, Wife, or Widow, to take them away, unless Marriage or Carnal Copulation follows. Resolved, 36 *Eliz. 12 Co. Li. 20, 21. 1 And. 115. Pl. 16c. Term. Trin. 25 Jac. 1. Hutt. Rep. 2. Term. Pasch. 25 Eliz. Savil's Rep. 59. Pl. 127.* Agreed by all the Judges at a Meeting at *Serjeants-Inn*, in *Fleetstreet*. *Vide the Case.*

1 Ventris
243. John
Brown's Case.
Term. Trin.
25 Car. 2.
2 Kebl. 193.
Pl. 42. S. C.

Where the taking of a Woman is against her Will, altho' she afterwards consents to be marry'd, yet it is Felony in them; 3 *H. 7. ca. 2.* And tho' it be not a Marriage *de jure*, because the Woman is in fear, and knows not what she doth; yet it is a Marriage *de facto*, and Felony within the Statute. So resolved, *Term. Mich. B. R. 13 Car. 1. Cro. Car. 482, 485, 488, 492. Fulwood's Case, Hob. 182.*

John Burton having but one Son and one Daughter, and being worth above 5000 *l.* *Edward Morris* caused her to be allur'd from her Father's House in *Southwark* down the *Thames* to see a Ship; and having her so aboard, afterwards by force and threats carried her into *Suffolk*, and there married her. This was adjudged no Felony, because her Father had a Son. And to make it Felony, the Woman must be Maid, Widow or Wife, that has Substance in Goods or Lands, or is Heir apparent. So resolved, *Hob. Rep. 182. Burton against Morris.*

B. did first strike *W.* upon some Words past between them, and then *W.* did strike

B.

B and some dry Blows did pass between them; and thereupon B. took a Knife and stabbed the said W. to Death. Upon a Special Verdict found at the Sessions at the Old Baily, and removed; and upon Advice with the Judges, it was resolved, That this Case was within the Statute of 1 *Ja* 1. *ca.* 8. against Stabbing; for the first stroke is to be construed the first stroke that was given, and not of any stroke given by the Party slain, before he is stabb'd. *Term. Hill. 9 Car. 1. Jones's Rep. 340. Pl. 7. Vincent Byard's Case.*

For

Forcible Entry.

ONE Justice of Peace alone may enquire of a Forcible Entry, and remove it by Statute, 8 H. 6. ca. 9. *Term. Mich. 22 H. 6. f. 5. a. b. Pl. 14.*

If a Man be seized of a lawful Possession, by the space of three Years without interruption, of any Lands, &c. he may keep the same with force against all others, and he is not to be removed by a Justice of Peace, tho' it be found by Inquisition, that he held the Land by force. *Term. Mich. 22 H. 6. f. 18. b. Pl. 33. Term. Mich. 8 H. 8. Kellew. 187. b. Pl. 4.*

If a Man hath been in peaceable Possession of Lands, &c. for three Years or more, by good Title, and then is turn'd out by force, and the Party offending is indicted, and the Party ousted is restored to his Possession, yet he cannot justify the Detainer by force, because his Possession was once interrupted. *Term. Pasch. 3 & 4 P. & M. Dyer f. 141. Pl. 48.*

If a Man hath been twenty Years in peaceable Possession of Lands, and be once removed from the Possession, he cannot get and detain the same again with force. *Dyer f. 141, 142.*

If a Man cometh to Lands, &c. by an unlawful Title, tho' he hath detained the Land by force for three Years or more, yet that shall not excuse his being punished by the

the Justices of Peace according to the Statute 8 H. 6. ca. 9. *Term. Pasch.* 14 H. 7. f. 28. a. Pl. 4.

If Complaint be made to Justices of Peace of a Forcible Entry or Detainer of Possession, according to Statute 8 H. 6. ca. 9. And the Justices to whom Complaint is made, do repair to the place and see the same, and enquire thereof; and that is found, and they grant Restitution, no other Justice of Peace can grant a *Supersedeas* to stay the same Restitution. *Term. Mich.* 2 & 3 Eliz. *Dyer* f. 187. a. Pl. 6.

If the Father be put out of the Possession of Lands by force, and dieth before or after Inquisition thereof, the Justices of Peace can't give Restitution to his Heirs, because he was not the same Person which was put out. So, if Tenant for Term of Years be ousted of his Term by force, and dies, and after his Death the Force is found by Inquisition, yet the Justices of Peace can't restore the Executor to Possession. So in all Cases where it is not the same Person who was ousted: But yet he who was guilty of the force may be indicted and punished before the Justices of Peace, by Fine and Imprisonment. *Trin Term.* 31 Eliz. 1 Leon. 27, Pl. 461. *Sover's Case.*

A Justice of Peace having Notice of a Forcible Entry or detaining of Possession by Force (tho' the Notice be by others than the Party grieved) ought to go to the Place and make Inquisition, and if the Force be
H found,

Forcible Entry.

found, to make Restitution. *Term. Mich. 7 Ed. 4. f. 18. a. Pl. 12.*

If a Man who hath Right and Title to Lands, &c. enter into them by force, and puts out him who is in Possession, this is enquirable before the Justice of Peace; and if the force be found, the Justice is to restore the ousted Person to his Possession. *Term. Mich. 22 H. 6. f. 18. b. Pl. 33.*

Commoner.
Term. Mich.
10 H. 7.
f. 9. b. Pl. 21.
So of Tirthes.
6 Ca. 1. 3 Cro.
201. Pl. 3.

If a Man distrains for his Rent with force; or a Commoner be expelled out of his Common by force; or if a Man keeps his Beasts in another Man's Ground by Force; In all these Cases a Justice of Peace upon Complaint made to him, may remove the Force, but he cannot award Restitution because these things are to be taken and used in another Man's Land.

If there be two Joint-tenants, or Tenants in Common of Lands, &c. and one of them doth put the other out of Possession by Force, the Justice of Peace may enquire, remove the Force, and restore to the Possession. *Term. Mich. 8 Ed. 4. f. 8. b. 9. Pl. 5. f. 19. a. Pl. 31. Term. Mich. 21 Ed. 4. f. 10. b. 11. a. Pl. 2.*

Breaking into the House, tho' no Person be in it, is a Forcible Entry; otherwise if the Door had been opened with a Key. *2 Rolle 2. Noy 136. Beade against Orm* By *Yelverton* in the same Case, the putting back a Bolt, or drawing the Latch is Forcible. Resolved, That if two come, and one commits Force, and the other enters peaceably they are both Guilty. *ibid.*

Force is, when the Entry or Detainer is with Weapons offensive or defensive, or with more Servants or Attendants than he doth usually maintain: So if divers come with Weapons, and enter without disturbance; yet this is an Entry by Force. If a Man enter peaceably, and after gets more Weapons than he commonly useth, this is a forcible Detainer.

Term. Hill.
22 H. 7.
f. 12. a. Pl. 2.
Vide Moor
656. Pl. 899.
A Justice in
going to re-
move the
Force may
take the Posse
Com.

If upon Complaint a Justice of Peace goes, and the Doors are kept shut against him, this is a forcible Detainer: So it is if he finds any great Number of People with Weapons, Mowing, Reaping, or Shearing Corn or Grass, whereunto he hath no Title, keeping Beasts on another Man's Land, selling or lopping Wood there; these are all Entries with force; the same is entring and taking away Goods.

When Justices of Peace certify to *B. R.* that Complaint was made to them of a Forcible Entry, and that they went to the place and found it true; and according to the Complaint removed the Force, and fined the Person guilty of the Force; If they do not certify the Time when the Complaint was made, 'tis cause of Exception sufficient to quash the Certificate; it being in the Nature of an Indictment, which requires certainty: And accordingly it was done, *B. R. Term. Trin. 15 Jac. 1. 2 Roll. 39.*

F. was indicted upon 8 *H. 6. ca. 9.* at the Quarter-Sessions in *Essex*, and the Force was found, and Restitution awarded: But the same Day after the Sessions ended, a *Certio-*

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orari was delivered to Sir T. M. praying him to award a *Supersedeas*, which he refused; and next Day Restitution was made, which ought not to have been made; but Sir T. M. ought to have allowed the *Certiorari*, and to have awarded a *Supersedeas*. *Term. Hill. 43 Eliz. B. R. Fitz-William's Case, Cro. Eliz. 915. Pl. 5. Yelv. 32. S. C.*

Term. Trin.
26 *Eliz. Cro.*
Eliz. 32. Pl. 9.
Harris's Case.

T. was indicted upon 8 H. 6. *ca. 9.* In this manner, *Inquisitio capt. apud Surfleet coram A. & B. Just. Pacis, &c. in partibus præd' per Sacramentum, &c.* And it did not appear, that *Surfleet*, where the Inquisition was taken, is in the Parts where the Justices by their Commission had power to act; and if it was not, the Inquisition was taken without Authority: And for that Reason the Indictment was discharged. *Term. Pasch. 9 Jac. 1. 2 Cro. 276. Pl. 6.*

Yelv. 81. Sir
Andrew No-
well's Case.
Latch. 182.
Widow Sta-
cy's Case. Ben-
loe's Rep. 203.
S. C. Term.
Hill. 2 Car. 1.

A Copy-holder may bring an Indictment of Forcible Entry into his Copy-hold upon 8 H. 6. *ca. 9.* (but the word Dissented ought not to be in it) and by Consequence a Justice of Peace may remove the Force, &c. *Poph. 205.*

But it must appear, That the Person is a Copy-holder and holds by Copy; otherwise it is not good. *Latch 182. Widow Stacy's Case.* There *Doderidge* agreed, That if a Woman hath a Widow's Estate in a Copy-hold by Custom, after the Death of her Husband, Copyholder, she is within 8 H. 6. *ca. 9.*

If several Persons be indicted upon the Statute of Forcible Entry, and they bring a *Certiorari*

Certiorari to remove the Indictment into *B.R.* some refuse to be bound to prosecute, but one offers to be bound: If he that offers to be bound be worth 10 *l.* the Justices cannot refuse taking his Recognizance. *Trin. Term. 15 Car. 1. March 27. Pl. 63.*

A Justice of Peace ought not to plead in Justification of his Entry by force of the Statute to any Action brought against him, but to plead the general Issue, and give the special Matter in Evidence. *Kellew. Rep. f. 187. b. Pl. 5.*

A Justice of Peace Recorded a Force, but he did not commit the Offenders, nor Imprison or Fine them. After a *Certiorari* was brought, and upon the Record in *B.R.* the Party who first complained, moved that the Offenders might be fined and imprisoned; but the Court would not do it, because the Statute 25 R. 2. ca. 21. requires the Justices of Peace to commit the Offenders presently: Which he not having done, the Record of the Force was void. *Moor's Rep. p. 848. Pl. 1150.*

R. having the Office of the Custody of the Castle of D. for her Life, by Grant from the Crown: And N. having the Inheritance thereof by Grant from the Crown; N. sent his Servants with Stuff to the Castle, and Furniture to prepare his Lodgings there. The Servants of R. deny'd them Entrance, and shut the Doors; the Servants of N. opened the Doors with force and entered. This was not a Riot in the Servants of N. because the Castle did belong to N. and

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Where a Man
may hold with
Force, and
where not.

R. had but the Custody: So that the Possession of R. was the Possession of N. *Term. Mich. 4 Jac. 1. Moor's Rep. p. 786. Pl. 1086.*

He that hath been seised peaceably for three Years may retain with force. But if a Disseisor hath continued his Possession three Years peaceably, and after the Disseeisee enters (as he may lawfully) and after the Disseisor re-enters, he cannot detain with force, because the first Disseeisin is determined by the Entry of the Disseeisee, and the Disseeisee by that remitted. But if a Man hath been seised by a good and just Title for three Years, and after is disseised by wrong, and after he re-enters, he may retain with Force, for he is remitted and in by his former Title. *23 H. 8. Br. New Cases, f. 5. b. Pl. 31. Br. Abr. Title Forcible Entry. N^o 22.*

There may be a Forcible Entry into the Moiety of a Manor. *Latch Rep. p. 224. Beverly's Case.*

If a Man be indicted for a Forcible Entry upon 8 H. 6. and before Restitution, the Force is pardoned by Statute or General Pardon, there shall be no Restitution upon that Indictment, because the first Force and Offence is pardoned. *Term. Hill. 4 Jac. 1. Yelv. p. 99. Fawcet's Case, Cro. Jac. p. 148. S. C. Noy 119. S. C. and all the Reports say, It was so resolved in a Case between the Lord Stafford and Sir Thomas Thynn.*

An Indictment for a Forcible Entry was quashed, upon two Exceptions taken to it.

I. Be

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1. Because there is no Addition of the County where the Party dwells that made the Forcible Entry : And without this Addition no Process can be awarded to out-law the Party, for it must be directed to the County where he dwells. 2. There is no County exprest where the Vill lies in which the Force was committed. *Term. Trin. 26 Eliz. B. R. Cro. Eliz. p. 32. Harris's Case. Vide the Case.*

23 *Car. 1. B. R. Style's Rep. p. 26.*

An Indictment of Forcible Entry made upon a Lease for so many Years, if *J. S.* shall so long live, was quashed for two Reasons.

1. Because it did not appear by the Indictment, That the Lessee had any Title to the Land at the time of the Force committed, for the Force was supposed to be done before the Lease commenced. 2. Because it was not averr'd that *J. S.* was alive at the time of the Forcible Entry made. *Term. Mich. 24 Car. 1. B. R. Style's Rep. p. 147.*

The King against *Bray*.

An Indictment for a Forcible Entry was quash'd, because the Party had made no Title. *Term. Mich. 1649. Style's Rep. p. 174.*

An Indictment upon Statute 8 *H. 6. ca. 9.* was discharged; for the Statute was recited, That if any be of his Lands and Tenements expelled or disseised, or be held out with Force, and did not say *manu forti*. And 2. It recited, That the Party grieved may have his Recovery *per assisam novam assisam*, whereas it ought to be *Disseisinam*. And the Parties had Restitution. This Indictment was removed by *Certiorari*, *Term. Pasch. 38 Eliz. Cro. Eliz. p. 477. Pl. 11. Warner and Colling's Case, S. P.*

S. P. Title
Church and
Church-yard.

30 Eliz. B. R. Cro. Eliz. p. 93. *Milward & al.* p. 96. *Knaresburgh's Case*, S. P.

C. was indicted upon Statute 8 H. 6. ca. 9. and discharged. 1. Because the Indictment was *ad Sessionem Pacis apud B.* and shews not in what County B. was, but the County was in the Margin. 2. Because it was not shewn before what Justice of Peace it was taken. *Term. Hill. 42 Eliz. Cr. Eliz. p. 738. Ludlow's Case.*

The Court held, That a Disseisin implies an Expulsion; and therefore an Indictment against Persons for Disseising, is good, tho' it be not laid, for expelling: And also, that a Detainer may be without Force, and not against the Peace. *Term. Trin. 2 Jac. 1. Cro. Jac. p. 31. Pl. 3. Andrews against Al Cranwell.*

A Justice of Peace committed S. and P. to Gaol, by force of the Statute of 15 R. 2. ca. 2. upon Complaint of one F. S. That he claimed Common in a Meadow of the said S. called M. And that the said S. and P. entered into the said Meadow, and kept him out from his Common with Force and Arms: And he was pray'd to view the Force, which he did, and found them holding the said Meadow with Force; and upon that committed them. They being brought in to B. R. by *Habeas Corpus*, the Court held, This Commitment was not warranted by the said Statute; for altho' one may be disseised of a Rent or Common by Force, which is inquirable and punishable, if it be found; yet one may not be indicted or committed

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for entering his own Land with Force, or holding his own Land with Force against a Commoner. And this Statute is not to be extended against any, but him who enters unlawfully, and ousts another of his lawful Possession. *Term. Mich. B. R. 10 Car. 1. Cro. Car. p. 486. Pl. 10. Sydnam and Parr's Case.*

An Indictment lies for a Forcible Entry into a Church. So held by the Court, *Term. Hill. 14 & 15 Car. 2. B. R. Siderf. Rep. p. 101.* The King against *March, Hollingworth, &c.* They held in the same Case, That in every such Indictment the Estate that the Party hath in the Premises ought to be shown; and it is not sufficient to say, He was possessed, &c. which shall be intended as Tenant at Will, which is not within the Statutes. And it ought to be *ad tunc exist'*, &c. & *ad huc existens*, &c.

Term. Hill. 14 & 15 Car. 2. B. R. The King against Larkin & al'. S. P. Term. Hill. 28 & 29 Car. 2. Ventris's Rep. p. 306. S. P. Term. Trin. 22 Car. 2. B. R. Ventris's Rep. 1. p. 89. S. P.

P. and S. were indicted of a Forcible Entry into a Meadow *in Com. B.* before the Justices of Peace there; and they offered to traverse the Force, but the Justices of Peace refused it, and awarded Restitution. This being removed, the Court said, The Justices ought to have accepted of the Traverse, for the first finding is in the nature of a Presentment, which upon the Traverse of the Party ought to be presently try'd; and if it be found no Force, no Restitution ought to be. And the Court awarded Restitution, *Term. Trin.*

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Trin. 18 *Car.* 2. *B. R. Siderf. Rep.* p. 287.
Pl. 1. The King against *Parker, Stacy*
& al.

Where Justices of Peace find a Force,
 and make a Record of it upon their view,
 they are to commit the Offenders, but
 cannot restore the Possession. *Term. Pasch.*
29 Car. 2. B. R. Ventris's Rep. 1. p. 308.

Forfeitures. Vide Regrators.

Forfeiture.

C. Being indicted for the Murder of *W. J.* with a Spit, it appeared, That the said *C.* was a Prisoner in the King's Bench, and lying in the House of one *A. C.* *W. J.* at one a Clock in the Night attempted to break open the Door, and broke a Staple thereof, and swore he would enter the House, and slit the Nose of *A. C.* because she was a Bawd, and kept a Bawdy-House. *C.* dissuading him, and reprehending him; he swore, That if he could enter, he would cut *C.*'s Throat: And he broke a Window in a lower Room of the House, and thrust his Rapier in at the Window against the said *C.* who in Defence of the House and himself, thrust the said *W. J.* in to his Eye, of which he died. The Opinion of the Court was, That if it were true that he broke the House with an Intent to commit Burglary, or to kill any therein, and a Party within the House (altho' he be not the Master, but a Lodger or Sojourner therein) kill him, who made the Assault and intended Mischief to any in it, this is not Felony, but excuseable by the Act 24 H. 8. ca. 5. which was made in Affirmance of the Common Law; and *C.* was acquitted. *Term. Pasch. B. R. 15 Car. 1. Cro. Car. p. 544. Pl. 9. Cooper's Case.*

James.

Games.

H Was convicted of keeping a Cock-pit for six Days. The Court agreed it an unlawful Game, within Statute 33 H. 8. and took their Measures for his Fine at 40 s. a Day, tho' the Indictment was at Common Law, and fined him 12 l. *Term. Trin. 27 Car. 2. B. R. Keh. Rep. pt. 3. p. 519. Pl. 61. The King and Howel.*

Caul

Gaol and Gaoler.

Justices of Peace can legally imprison no where but in the Common Gaol; and therefore the Justices of Peace offend who commit Felons and others to the Compters in London, and other Prisons than the Common Gaols. *Term. Trin. 10 Jac. 1. B. R. Co. Li. 9. f. 119. b. in the Lord Sanchar's Case, Co. 2 Inst. p. 43. Hill. Term. 43 Eliz. Rot. 1831. in G. B. Cr. Eliz. p. 289. Pl. 35. Scavage versus Tattham.* In an Action of false Imprisonment against the Defendant, as a Justice of Peace, for detaining the Plaintiff more than three Days to examine him, in his own House, and not sending him to the Gaol, till further Examination. *Vide Brown's Rep. 2. 41.*

Good

Good Behaviour.

ONE who was bound to the Good Behaviour, and was indicted for calling one *Pelter, Liar, Drunkard*; and said, *I will make thee a poor Kirton*; and also because he *vi & armis clausum fregit, & averia cepit, & abduxit, & injuste detinet. Wray, Ailiffe and Gawdy* thought these Words are no Forfeiture of the Recognizance, because they are not Words which threaten any hurt to his Person. And they said, That to forfeit such a Recognizance, an Act must be done which imports an intention to do some violence to the Person: As to say, *I will meet thee*: But 'tis no breach to enter into a close, but it would to take any Thing from the Person *vi & armis*. *Shute* said, The Words, *I will make thee a poor Kirton*, are very strict to make a Breach. *Glench* said, That the Words themselves are a Breach of the Good Behaviour. *Term. Mich. 29 Eliz. Moor's Rep. p. 249. Pl. 395. Cro. Eliz. p. 86. Pl. 7. Knig's Case. S. P. C. & 1 P.*

A Woman bound to the Good Behaviour for suborning of Witnesses, *Term Pasch. 15 Car. 1. March. Rep. p. 11. Pl. 30.*

Vide Title **Surety of the Peace.**

One *Toplin*, an Attorney, was indicted for a Common Barretor, but acquitted by the Jury: Yet he threatening the Witnesses; and it appearing to the Court, That he was a notable Knave, he was bound to his Good

Be.

Good Behaviour.

111

Behaviour. *Latch. Rep. p. 5. Toplin's Case.*

Sir *W. B.* was brought before a Justice of Peace, upon an Information made, That he had cheated one at Play with false Dice: The Justice required him to find Sureties for his Good Behaviour; and upon his refusal committed him to Prison. Sir *W. B.* brought his *Habeas Corpus*. And the Court said, That a Justice of Peace cannot bind to the Good Behaviour upon a general Information, or commit to Prison for refusing to find Sureties for his Good Behavior upon such Information. *Term. Pasch. 23 Car. 1. B. R. Style's Rep. p. 18. Sir William Bronker's Case.*

It was holden by the Court, That if a Man be bound to the Good Behaviour by Justices of the Peace, for refusing to obey their Order, they ought not to grant a *Superseas*, because the Party was not bound in that Court upon Statute 21 *Jac. 1. ca. 8.* But they would grant a *Habeas Corpus*, and if they saw Cause discharge him. *Term. Hill. 1 Car. 1. Benloe's Rep. p. 301. Blacknell's Case.*

B. was indicted, for that he *Scandalosè & contemptuosè propalavit & publicavit verba sequentia, viz.* That none of the Justices of Peace do understand the Statutes for the Excise, unless Mr. *A. B.* and he understands but little of them; no, nor many Parliament-Men do not understand them upon the Reading of them.

The Court was of Opinion, That *B.* was not indictable for speaking such Words: But they

Good Behaviour.

they said he might have been bound to his Good Behaviour. *Term. Pasch. 21 Car. 2. B. R. Ventris's Rep. 1. p. 16. The King against Burford.*

H. was a Vicar, and for saying in his Sermon, That devourers of Church-Lands never thrived to the third Generation, he was bound to his Good Behaviour. *Term. Trin. 16 Car. 2. B. R. Kell. Rep. pt. 1. p. 751. Pl. 45. Justice Tyrrel against Hatch.*

Hand

Hand-Gun.

Was convicted before two Justices of Peace, for having and keeping a Hand-Gun, and for shooting with it, against the Stat. of 33 H. 8. ca. 6. for which he was adjudged to pay 10 l. one Moiety to the King, the other to the Party which brought him before the Justices, and he was committed till he should pay. He brought a Habeas Corpus and a Certiorari, and removed the Record into B. R. And it was quashed, because the Conviction was *coram J. B. & G. B. Ar' duobus Justic' Dom' Reg' ad pacem in Com' præd' conservand'*: But the Word (*assign'*) was omitted; so that it did not appear, whether the said Justices were assigned to keep the Peace or not. There was another Exception, and that was, That it did not appear that either of the Justices was the next Justice, as it ought to have been. *Term. Pasch. 21 Car. 2. Saunder's Rep. 1. p. 262. Sander's Case. Siderf. Rep. 1. p. 419. S. C. Ventris's Rep. 1. p. 39. S. C. Keb. Rep. 2 pt. p. 521. Pl. 16. S. C. and 137. Pl. 59. S. C.*

S. was convicted before a Justice of the Peace upon the Statute of 33 H. 8. ca. 6. for keeping of a Gun; and upon proof it did appear, That he had not 100 l. *per Annum*. The Record of the Conviction was removed into B. R. and this Exception was taken to it, *viz. Non habuisset 100 l. per Annum*, but it doth not say when; for it may be that he

I

had

had 100 *l. per Annum* at the time when he kept a Gun, but not when he was convicted. It was answered, That the Words *non habuisset* shall relate to all Times past, and is as much as to say *nunquam habuit*; and the Conclusion being *contra formam Statuti*, must explain such Words which seem to be doubtful. The Court was of Opinion, and so declared, That this being a Conviction before a Justice of Peace, the time when the Offence was committed, should be certainly alledged, *viz.* That S. such a Day and Year had not 100 *l. per Annum*: For which Reason the Order was quashed. *Term. Pasch. 2 W. & M. B. R. Modern Rep. 3d. pt. The King against Silcor.*

Conviction for a Gun, contrary to 33 *H. 8. ca. 6.* The Conviction was for having a Gun in his House: The Statute is, Use to keep in his or her House, and perhaps it might be lent him: The Words of the Statute ought to be pursued. The Conviction was quash'd. *Term. Trin. 1 W. & M. B. R. Shower's Rep. p. 48. K. & Q. against Lellin.*

Two Indictments were preferred against W. one for keeping a Gun, and the other for Shooting; and both quash'd, because the Disability of the Person was not rightly set forth. *Term. Hill. 9 W. 3. B. R. The King against White.*

Headborough, Vide Constable.

Highways.

MAny Indictments were exhibited severally against several Men, because each by himself suffered his Door to be unrepaired: And it was shewed in the Indictments, That every one ought to repair. And thereupon it was moved, That they might be quashed; but the Court would not quash them without Certificate, that the Parties had repaired their Doors. *Term. Trin. 15 Car. 1. March's Rep. p. 45. Pl. 71.*

Of Common Right, all the Country ought to repair the Highway (except where some are particularly bounden to repair it) because the Country have their Ease and Passage by it. *Co. Rep. 13. p. 33. Term. Pasch. 7 Jac. 1.*

An Indictment against the Inhabitants of *Shoreditch*, and *Hackney* in *Middlesex*, for not repairing the Highways, was quash'd; because the Parishes were jointly indicted, which ought to have been several. *Term. Mich. 1649. Style's Rep. p. 157.*

An Indictment against the Inhabitants of *Mile-end*, within the Parish of *Stebonheath*, for not repairing the Highway, was quashed, because *Mile-end* is but a Hamlet within a Parish, which cannot be charged to repair a Highway, except it be by Prescription, or for some other special Reason: but the whole Parish or Vill is to be charged. *Term. Mich. 1649. Style's Rep. p. 163.*

Ruled good
without it.

Term. Mich.

2 Car. 1. B. R.

Noy's Rep.

p. 90. in Hal.

set's Case.

An Indictment for not repairing a Highway, was quash'd, because it did not set forth from what place to what place the Way did lead. *Term. Mich. 1652. Style's Rep. p. 356.*

By *Rolle*, Chief Justice, all Highways of Common Right are to be repaired by the Inhabitants of that Parish, in which the Way lies: But if any particular Person will inclose any part of a Way or Waste adjoining, he thereby takes upon him to repair that which was so inclosed. *Term. Hill. 1652. Style's Rep. p. 364.*

An Indictment against *Sir Richard Lucy Bart.* for not repairing of an Highway, was quash'd, because it was not shewed of what place he was an Inhabitant. *Term. Mich. 2 Car. 1. B. R. Noy's Rep. p. 87. Sir Richard Lucy's Case*, reported by *Benloe* in his Reports, p. 198. as in *Hill. Term. 2 Car. 2.*

An Indictment of a Nuisance in a Highway, was quash'd, because it ought to have been the Queen's Highway, or the Highway. *Term. Mich. 29 Eliz. B. R. Cro. Eliz. p. 63. Pl. 8. Co. Li. 56. a.*

Sir N. S. was presented at the Sessions by a Justice of Peace upon his view, for not repairing a Highway, which he ought to repair, in respect of his holding of certain Lands, parcel of the Way unrepaired, which he had inclosed and incroached. This being removed into *B. R.* it was the Opinion of the Court, That *Sir N. S.* ought to have been charged, either by reason of his holding the Land singly, or by

his incroaching singly. For *Kelynge*, Chief Justice, said, That if he had incroached upon the Highway, he was for that chargeable to repair it, so long as the Incroachment continued; but not in respect of his holding the Land incroached; for whenever he lays the Land open again to the Way, whereby the Incroachment ceaseth, he shall be discharged from the repair of it: But where a Man is obliged to repair a Highway in respect of his holding of any Lands, altho' he leaves those Lands open to the Way, yet he is always obliged to repair the Way. *Term. Trin. 22 Car. 2. B. R. Saunderson's Rep. 2. p. 260.* Sir *Nicholas Stough-ton's Case*. The same Case is reported in *Siderf, Rep. 1. p. 464.* And he says, That the Chief Justice said, and it was not denied, That if one inclose Land of one side, which was anciently inclosed of the other side, he who made the new Inclosure shall repair all the Way: But if there had not been an ancient Inclosure of the other side, he should have repaired but half of the Way: But if one makes a new Inclosure of both Parts of the Way, there he shall repair all the Way. This Point is resolv'd in *Sir Edward Duncombe's Case. Term. Trin. 10 Car. 1. Cro. Car. p. 366. Pl. 3.* B. R. In *Austin's Case, Term. Hill. 23 & 24 Car. 2. p. 256.* S. P. Chief Justice *Hale* said, If there be no special Matter to excuse the repair of the Highways upon others, the Parish where the Highway is ought to repair it of Common Right. *Ventris's Rep.*

Highways.

p. 183, and p. 189. In the same Case, he said, That if a Way lead to a Market, and were a Way for all Travellers, and did communicate with a great Road, &c. it is an Highway: But if it lead only to a Church, to a private House or Village, or to Fields, there 'tis a private Way.

The Lands of the Church in the Hands of the Parson, are liable y^e be charged for the repair of the Highwas. So adjudged by *Hale* and the whole Court. *Term. Trin. 27 Car. 2. B. R. Levinz. Rep. 2. p. 139. Keb. Rep. pt. 3. 476. S. C. Webb against Bachelor.* The same Case is reported by Judge *Ventris*, *Rep. 1. p. 273.* And he saith *Hale* said, It had been so resolved upon Debate before all the Judges, That the Clergy are liable to all publick Charges imposed by Act of Parliament. See the Form of a Conviction for Highways upon the view of a Justice of Peace. *Kelynge's Rep. p. 33, 34.*

An Indictment against S. for not repairing the Highways, the Way laid to be the King's Highway, or the Common Street, Quash'd, because it was not laid for all the King's Lige People. *B. R. Term. Hill. 9 W. 3. The King against Sanders.*

Horse-Stealers.

B Was Owner of a Horse and lost him, and he was afterward sold in *Smithfield* by *J. B.* by the Name of *T. C.* to the use of *A.* and toll'd. There was no such Person in *rerum natura*, as *T. C.* Adjudged, That here was no alteration of the Property of this Horse, because it did not appear that the Horse was stoln, and it would be a Mischief to the Owner of the Horse if he should be put upon the difficulty to prove his Horse to be stoln. *Term. Mich. 3 Ca. 1. Palm. Rep. p. 486. Barker and Redding's Case. C. Jones's Rep. p. 163.*

Hue and Cry.

THE Servant is robbed, the Justice ought to take the Oath of the Servant, that he did not know any of the Parties, and not the Oath of the Master; because the Servant might know the Person who robbed, but the Master could not, he being not in Company. *Term. Trin. 31 Eliz. C. B. Cro. Eliz. p. 142. Pl. 8. Green's Case.* The same Case in *Leon. Rep. 1. p. 323. Pl. 456.*

The same Point resolved. *Trin Term. 2 Car. 1. C. B. Reported in Cro. Car. p. 37. Pl. 2. Raymond versus Hundred. de Anna.* And with this, *Term. Mich. 9 Car. 1. B. R. Cro. Car. p. 336. Pl. 22.* The same Point *Benloe's Rep. 1 pt. p. 155. Term. Trin. 8 Jac. 1. Needham against the Hundred of Stoke. S. P.*

If the Party robb'd comes to a Justice of Peace, and prays to be examined, and the Justice refuseth; in the Opinion of *Perriam* and *Anderson*, Judges of the Common Pleas, an Action will lye against the Justice upon the 23 *Eliz. ca. 13.* because the Justice doth not act therein as Judge of Record, but as a Minister appointed for the Examination by the Statute. *Leon. Rep. p. 323, 324.*

The Robbery must be committed on some Person, and upon the Road, in the Highway, or in the open Fields, and not in an House. *Term. Mich. 1 W. & M. B. R. Shower's Rep. p. 60. Young against the Hundred of Tedcomb.* Trin. Term. 27 Eliz. C. B. Co. Li. 7. f. 6. a. *Sensil's Case.* The same Point, *Term. Pasch. 42 Eliz. B. R. Cro. Eliz. p. 753. Pl. 13.* The same Point, *Term. Mich. 32 Eliz. C. B. Leary. Rep. 1. p. 262. Pl. 350.* Gardner and the Hundred of Redding. The same Point, *Term. Trin. 42 Eliz. B. R. Moor's Rep. p. 620. Pl. 848. Co. 2 Inst. p. 569.*

The Robbery must be committed in the Day-time, and not in the Night, either in the Morning before it is Day-light, or in the Evening after it is dark. *Trin. 28 Eliz. C. B. Rot. 725. Co. Li. 7. f. 6. a & b. Ashpole's Case. S. C. Leon. Rep. 1. p. 57. and 4 p. 218. S. C. And And. Rep. 1. p. 158. Pl. 202. and Golds. p. 55. Pl. 10. and 60. Pl. 28. Moor's Rep. p. 620. Pl. 848. Trin. 29 Eliz. C. B. Rot. 1027. Co. Li. 7. f. 6. b. Milborn's Case, 4 Leon. p. 59. Pl. 149. S. C. Savil's Rep. p. 83. Pl. 163. S. C. Term. Hill. 34 Eliz. in Scacc. Cro. Eliz. p. 270. Pl. 12. Ridgley versus the Hundred of Warrington. Term. Mich. 3 Jac. 1. B. R. Cro. Jac. p. 106. Pl. 45. May against the Hundred of Morley. Golds. Rep p. 70. Pl. 14. S. R. Term. Mich. 1650. Style's Rep. p. 233. Bennet and the Hundred of Hertford. S. P. Term. Mich. 1 W. & M. Shower's Rep. p. 60. Young against the Hundred of Tedcomb. Term. Mich. 22 Car. 2. B. R. Keb. Rep. 2d pt. p. 713. Pl. 92. Barret against the Hundred of Stoke, S. P.*

A Justice of Peace of the County, and who inhabits in the Hundred where the Robbery is committed, may take the Examination upon the Oath of the Party robbed, according to the Statute 27 *Eliz. ca. 13.* when he is out of the County: Because the Oath is taken by the Justice of Peace, not by vertue of his Office, but as a Person appointed by the Statute for this purpose: But in other Cases where a Justice of Peace doth a thing by vertue of his Office out of the County, the same is void. So it was adjudged *B. R. Term. Pasch. 7 Car. 1. Jones's Rep. p. 239. Pl. 4. Helier versus the Hundred of Benbursh. S. C. Cro. Car. p. 211. Pl. 3.*

It is not material in what Parish the Robbery is committed, but the Hundred must be certain. *Term. Trin. 29 Eliz. Owen's Rep. p. 7. Bucknel's Case, and Goldsb. Rep. p. 58. Pl. 16. S. P.*

Money was delivered to a Carrier at *B.* to be carried to *London*, who packed it up: And as he was on his Journey, certain Malefactors came to him in another Hundred, and there took the Horse and Pack and led him into a Wood in another Hundred. This is a Robbery in the Hundred where the Horse and Pack was taken: But if the Carrier had led the Horse himself, then it would have been in his own Possession, and no Robbery till he came into the second Hundred. *Goldsb. Rep. p. 86. Pl. 11.*

If one be assaulted to be robbed in one Hundred, and he escape and flee into another

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ther Hundred, and the Thieves instantly pursue him, and rob him there, it was the Opinion of the Court, That the Hundred in which he was robbed should be solely charged: And also, That if a Man come into a Hundred after the Robbery is committed, it is not chargeable. *Term. Mich. 10 Car. 1. Hutton's Rep. p. 125. Dean's Case.*

C. was indicted for that a Burglary was committed in the Night by Persons unknown; and J. S. gave Notice of it to C. being then Constable, and required him to make Hue and Cry, which he refused. And all the Court held, That he was indictable, notwithstanding an Hundred shall not be charged, because it is the Constable's Duty, upon Notice given, presently to pursue. *Term. Hill. 41 Eliz. Cro. Eliz. p. 654. Pl. 17. Crouther's Case.*

Ingrossers. Vide **Regrators, &c.**

Inn,

Inn-keepers,

ONE comes to an Inn, and the Inn-keeper says to him, Here are Persons resort to my House, I do not know them, nor what their Behaviour is; and therefore take the Key of such a Chamber and put your Things there, at your own peril, for I will not take any Charge of them: And they are afterwards stoln, the Inn-keeper shall answer for them; for an Inn-keeper is by the Law chargeable for all Things that come to his Inn, and he can not discharge himself by such Words. *Term. Mich. 7 & 8 Eliz. Moor's Rep. p. 78. Pl. 207.* But if he refuses him, and says, his House is full, and yet he will stay, &c. 'Tis otherwise, *Term. Hill. 4 & 5 Pb. & M. Benloe's Rep. p. 18. Pl. 72. Bird against Bird. Dyer 158. b. Pl. 32. S. C. Term. Pasch. 26 Eliz. B. R. Co. Li. 8. 32. Calye's Case, S. P.*

If a Man hires a Chamber in an Inn for some time, there the Inn-keeper shall not be chargeable with any Robbery committed in that time: But if one leaves Goods in an Inn, and goes about his Business, and returns the same Day, and his Goods are stoln, the Inn-keeper shall answer for the Robbery of the Goods. *Term. Pasch. 7 Jac. 1. Moor's Rep. p. 876. Pl. 1229. Walbrook against Griffith. S. C. in Brownl. Rep. 2. p. 254. Latch. Rep. p. 88. Gulielm's Case, S. P. Vide Latch p. 126. Drope versus Thaine, Trin.*

Trin. Term. 2^d Car. 1. Benloe's Rep. 173. S.C.
Vide Latch p. 88. Gulielm's Case. Term. Mich.
5 Jac. 1. 2 Cr. 188. Pl. 12. Gilley contra
Clark, Noy's Rep. p. 126. S. C.

Any one may erect an Inn for lodging of Travellers, without any Allowance or Licence. Resolved by the Judges *June 19. 22 Jac. 1. Hutton's Rep. p. 99.*

If an Inn useth the Trade of an Ale-house, it shall be within the Statute of Ale-houses, by *Yelverton. Term. Pasch. 9 Jac. 1. Bulstr. Rep. 1. p. 109.*

Jurors.

Jurors.

A Man born in *Flanders*, who came in to *England* when he was very young, and had been sworn at the Court Leer, being return'd of a Jury, was challenged for that he was an Alien, and the Challenge allowed to be good, *Term. Hill. 14 H. 4. f. 19. b. Pl. 23.*

A Juror was challenged for the Favour, and it was found by his Triers, That he was indifferent; and before he was sworn, he was challenged for another Cause; but it was not allowed. In the same Case *Danby* said, That where one was challenged, because he had found an Issue for the Plaintiff upon the same matter between the same Parties the Day before, That that was no principal Challenge, for a Man shall not be challenged because he speaks Truth. If one Party challenge the Juror, and the other not; and after he that challengeth releaseth the Challenge, the other may well challenge him, tho' he did not challenge him before. By the Court allowed, *Term. Trin. 9 Ed. 4. f. 16. b. Pl. 15.*

Where a Juror is not challenged by one Party, who had sufficient Cause of Challenge: And afterwards is challenged by the other side, and afterwards that Party doth release his Challenge: In that Case the first Party cannot challenge the same Juror again, because he slipt his Time of Challenge, and he

he had admitted the Party to be indifferent at the first.

If a Juror, after he is returned and before he is sworn, saith, That he will find for the Plaintiffs or Defendants; and doth so say for Favour he hath to the one, and Hatred to the other; and not of his own Knowledge of the Truth of the Case; this is good Cause of Challenge, *Term. Mich. Ed. 3. f. 327. a. 69.*

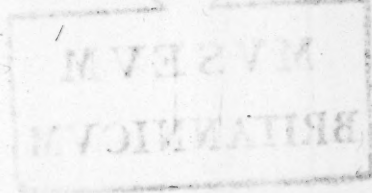
If a Juror travels with one of the Parties to the Issue, and eats and drinks with him at his Charges; this is good Cause of Challenge. *Term. Hill. 13 H. 4. f. 12. b. 13. a. Pl. 4.*

Two Men are at difference, and refer the Matter to Arbitrators, one chosen by one and the other by the other, who meet, debate, but cannot agree. The Matter is prosecuted at Law, an Issue joined, and a Jury returned, and one of the Arbitrators return'd upon the Jury: It is good Cause of Challenge. *Term. Hill. 3. H. 6. f. 14. b. Pl. 3. Term. Trin. 20 H. 6. f. 39. b. 40. a. Pl. 9.*

If one engages himself by Oath, Promise, Covenant or otherwise, That he will take his part, and be his Friend and assist him in all Causes whatsoever; this is a good Cause to challenge him, if he be returned of a Jury where the Party to whom he is engaged is Plaintiff or Defendant. *Lib. Assiz. 34. f. 204. b.*

If two Men be at Difference and at Law, and depending that there is a Suit at Law,

at



at Issue, where one of them is Plaintiff or Defendant, and Issue joined, and the other is returned upon the Jury; 'tis good Cause of Challenge. *Term. Mich.* 8 H. 5. f. 11. a. Pl. 22.

If one Man indicts another of Felony, who pleads, and he who indicted him is returned upon the Jury, it is good Cause of Challenge, *Lib. Assiz.* 12. f. 37. b. Pl. 36. *Term. Pasch.* 7 Ed. 4. f. 4. b. Pl. 11. *Term. Mich.* 18 Ed. 4. f. 12. b. 13. a. Pl. 8.

Term. Mich.
44 Ed. 3. f.
44. a. Pl. 55.
Term. Pasch.
9 Eliz. Dyer.
f. 261. a.
Pl. 26.

When a Man is indicted and arraign'd of Murder or Manslaughter, the Prisoner cannot plead the Special Matter, but must plead Not guilty; and the Jury must find the Special Matter, whereof the Prisoner shall have the advantage; for it is not a sufficient Verdict for the Jury to say, That the Prisoner killed the dead in his own Defence, but they must shew how: And tho' it be specially found upon the Indictment, yet the Prisoner is not to be discharged until he hath purchased his Pardon. *Lib. Assiz.* 43. Pl. 31. *Term. Trin.* 26 H. 8. f. 5. a. Pl. 21. *Term. Hill.* 4 H. 7. f. 2. a. Pl. 3. *Kellew.* *Term. Trin.* 20 H. 7. f. a. Pl. 8. p. 108. Pl. 27. and 32.

A Man is indicted for Murder, the Jury may find it Manslaughter. 1 *Mar. Plow.* *Com.* f. 101. b. *Br. Abr. Tit. Coron.* N° 222.

Any one may challenge for the Crown, as well as the King's Counsel, and when they have Cause to challenge, they must challenge them as they are called, but they are not to shew the Cause of their

Chal.



Challenge, before that the other Jurors which are not challenged are sworn; and then if the Cause shown be sufficient, the Juror challenged shall be withdrawn. *Term. Mich. 8 Jac. 1. Bulstr. Rep. 1. p. 84. Morgan's Case.*

The Prisoner *in favorem vite* may peremptorily Challenge thirty four without any Cause, and as many more as he will with Cause, shewing the Cause presently. *Morgan's Case supra.* And for it was cited *Term. Hill. 3 H. 7. f. 2. a. Pl. 5. Term. Mich. 3 H. 7. f. 12. Pl. 5. and Term. Trin. 9 H. 5. f. 7. b. Pl. 21.*

A Juror was challenged, for that he was Cousin to the Wife of the Defendant. *Term. Mich. 8 H. 6. f. 15. b. Pl. 38.*

It is a good Challenge to a Juror, that he hath not Lands or Tenements of 40 s. per Annum in the County where the Party is to be tried. *Term. Pasch. 21 H. 6. f. 39 a. Pl. 4. Term. Trin. 9 H. 7. f. 1. b. Pl. 2. Term. Mich. 12 H. 7. f. 4. a. Pl. 2.*

T. &c. his Wife, and two of his Sons were indicted at the *Old Baily*, for that they *felonice & burglarit'* broke the House of F. T. and took away Money and Jewels to the value of 5000 l. The Jury found T. guilty of Burglary, and one of his Sons guilty of Felony, and the others they acquitted, and all upon the same Indictment and the same Evidence. And the Judges were of Opinion, That the Jury might have found them all guilty of the Felony; but they could not find one guilty of Burglary and the other

other of Felony, upon the same Indictment and the same Evidence. *Term. Mich. 15 Car. 2. Siderf. Rep. p. 171. Pl. 4.* The King against *Turner* and his Wife, and two of his Sons.

— An Indictment of Forcible Entry and Detainer was preferred against *S.* and the Jury found, as to the Detainer with Force, *billa vera*, but as to the Entry *Ignoramus*. The Court was of Opinion, That the Jury ought to have found all or none; and quashed the Indictment. *Term. Pasch. 21 Car. 2. B. R. Ventris's Rep. p. 25.* The King and Serjeant.

In an Information for Forgery, the Defendant challenged one of the Jury, for that the Prosecutor had been lately entertained at his House: This was admitted to be a Challenge to the Favour, tho' against the King. And then the Counsel for the King challenged another; and being press'd to alledge the Cause, the Court ordered the Panel to be first gone through, and if there were enough, the King is not to shew any Cause. *Term. Pasch. 29 Car. 2. B. R. Ventris's Rep. i. p. 309.*

Justices of Peace.

IF one comes to a Justice of Peace and complains to him, That *J. S.* is a Felon, and has stoln certain Things, and the Justice commands the Person who complains to be at the next Sessions, to give Evidence against the Felon upon a Bill of Indictment, and a Bill is prefer'd, he gives Evidence, and the Bill is found; In this Case he that complained and gave Evidence, shall not be punish'd in Conspiracy, nor the Justice of Peace, if the Party so indicted be acquitted of the Felony. *Term. Pasch. 3 Ed. 6. Moor's Rep. p. 6. Pl. 22.*

C. a Justice of Peace was censured, because he went to a Place to view the Rioters, and remove the Force, but the Offenders being gone before he came, and he being requested to go to the House where they were, he refused it, tho' it was but a small distance. *Moor's Rep. p. 628. 864.*

In petty Quarrels between Party and Party, or for the Peace or petty Trespasses, where the King is not to have a Fine; there a Justice of Peace may make and perswade an Agreement between the Parties. *Noy's Rep. p. 103. Whinnel against Strowd.*

If a Justice of the Peace does not observe Upon 2 & 3 the Form prescribed him by the Statute, no Ed. 6. ca. 14. writ of Error lies, because it is void, and against shooting of Hail-
nam non Judice: And if he doth pursue shot.

and act according to the Statute ; then neither the King's Bench, nor the Justices of Peace can alter what he has done. So it was holden by the whole Court. *Term. Hill. 3 Car. 1. Jones's Rep. p. 170. Cole's Case. Vide Post 137.*

Barratry was tried in one Day, and Good. See Title Barratry.

Justices of Peace may not enquire, try and determine Extortion, or any other Offence, which is not capital, in one and the same Day ; for the Party ought to have a convenient Time to provide for the Trial. And where treble Damages are given by Act of Parliament, the Justices are not to assess the Damages, and then treble them ; but the Jury ought to find the Damages, and then the Justices are to treble them. So it was resolved, *B. R. Term. Hill. 11 Car. 1. Cro. Car. p. 438. Pl. 9. 448. Pl. 20. in Bumsted's Case. Jones's Rep. p. 379. Pl. 10. the King against Lamfern, the same Point is resolved.*

A Commission of Peace issues, and J. N. is named in the Commission, and he is afterwards made a Knight, yet he may safely Act by vertue of that Commission. So if a Barraster at Law be in Commission, and he is afterwards called to be a Serjeant at Law, he may act still by vertue of that Commission. *36 H. 8. Br. New Cases f. 65. a. Pl. 295. and f. 111. a. Pl. 509.*

If a New Commission of the Peace issues, and is read ; the former is determined, and all the Justices are to take Notice of it ; and if they sit by it, all they do is void. And if a Commission be directed to

A. and B. who are not *in rerum natura*, or are dead at the time of the *Teste*, &c. the former Commission remains in force, and the new is void.

If a Commission be directed to N. *pro hac vice*, that determines the former Commission as to those matters.

If a Commission of Oyer and Terminer issues to hear and determine Felonies, that determines the Commission of the Peace as to Felonies, but not as to the Peace. If the Justices sit by vertue of a Commission of the Peace, and do not adjourn, the Commission is determined. *Br. New Cases, f. 111. a. & b. Pl. 509.*

A Justice of Peace being a Judge of Record, may be indicted for taking Money, or any ill Practice. *Br. New Cases. f. 114. b. Pl. 521.*

Justices of Peace are to commit to the County-Gaol only. *Latch Rep. f. 16. Brown's Rep. pt. 2. p. 41. Legate's Case.*

Tanfield held, That a Man cannot prescribe to be a Justice of Peace. *Term. Pasch. 5 Jac. 1. Brownlow's Rep. pt. 1. p. 206. Viccars against Wharton.*

The Justices of Peace are to meddle only with such Matters, wherein the Statutes give them Power, for they have all their Power by Statutes. *Savil's Rep. p. 134. Pl. 212. Agard versus Candish.*

Rolle, Chief Justice, said, That 1000 l. Bond might be required at the Sessions of the Peace, for the keeping of the Peace, as the Case may stand, *viz.* If the Party to be

Justices of Peace.

be bound be a dangerous Person. *Term. Pasch. 1652. Style's Rep. p. 322.*

L. was indicted for the Murder of *M.* and the Indictment was discharged, because it did not shew in what County the Inquisition was taken, and a Justice of Peace can't take an Inquisition out of his Jurisdiction, nor did it shew the Place where the stroke was given. *Term. Trin. 30 Eliz. Gro. Eliz. p. 137. Pl. 9. Lenthal's Case. Pl. 10. S. P. in Gosnal's Case, as to the Place where the stroke was given.*

In *Buckinghamshire* a Justice of Peace was indicted, for that he sat as a Justice of Peace, and had not 20 *l. per Annum, contra pacem & formam Statuti*: And the Indictment was quashed, because it was not alledged, That he had not 20. *l. per Annum* at the Time when he sat as a Justice of Peace; for if he had at that time, then he was not punishable within the Statute. *Term. Mich. 20 Jac. 1. Rolle's Rep. 2. p. 247.* The same Case is reported, *Gro. Jac. p. 643, Pl. 4.* by the Name of *Castle's Case*. And there it was said, that it was the Opinion of the Court, That when a Statute appoints a Penalty for the doing of a Thing, which was no Offence before, and appoints how it shall be recovered, it shall be punish'd by that means and not by Indictment.

M. was ordered by some Justices of Peace to take upon him an Office, or to pay a Sum of Money: And he appealed to the Justices at the Quarter-Sessions, who confirmed the first Order: Upon which *M.* said to them,

If I cannot have Justice here, I will have Justice elsewhere: For which the Justices indicted him, and fined him 5 *l.* and committed him till payment. He was brought into *B. R.* by *Habeas Corpus*; and the Opinion of the Court was, That he was indictable, and being in Execution, they could not Discharge nor Bail him; but he being then a Prisoner of that Court ought to pay the 5 *l.* in Court; which he did and was discharged. *Term. Pasch. 15 Car. 2. Siderf. Rep. i. p. 144. Pl. 26. The King against Mayo.*

C. and his Son were convicted of a Forcible Detainer upon the view of two Justices of Peace, and by them sent to Gaol, and Restitution given to Sir *W. S.* Whereupon C. and his Son brought a *Habeas Corpus*, and the Sheriff returned as above; and inasmuch as there was not any fault in the Caption and Return. C. and his Son offered to submit to a Fine; but to moderate their Fine, and to the intent that the Court should award Restitution, it appeared by several Affidavits, That C. had been in Possession thirteen Years, and was at the time of the said Conviction in peaceable Possession: And Sir *W. S.* pretending Title to it by a Grant from the Duke of *York*, as it was the Land of one of the Regicides, came into the Country, and did procure the said two Justices to go with him and to use this Invention to give him Possession: For which Practice the Court fined C. and his Son but 3 *s.* 4 *d.* but ordered, that they should prosecute an Information against Sir

Justices of Peace.

W. S. and the Justices for this piece of Practice. *Term. Mich. 15 Car. 2. B. R. Siderf. 1. p. 156. Pl. 7.* The King against *Challenor* and *Challenor*.

Sir P. T. for compounding and not returning Recognizances to the Sessions of the Peace, and taking 20 s. of every unlicens'd Ale-house, and converting it to his own Use, and other Misdemeanors, was fined 1000 Marks, imprisoned during the King's Pleasure, bound to the Good Behaviour for a Year, and to make a publick acknowledgment of his Offence at the Assizes. *Term. Pasch. 16 Car. 2. B. R. Kebl. Rep. 1 pt. p. 727. S. C. Siderf. 1. p. 192. Pl. 22.* The King against *Sir Purbeck Temple*.

There had been Anciently and Time out of Mind, one Constable of *Ratcliff, Shadwell*, and *Old Wapping* in *Middlesex*: But within 30 Years past, because the Houses and Inhabitants were encreased, they made several Constables, and relieved their poor distinctly: But *Shadwell* having their poor so much encreased, that they were not able to relieve them, they made their Complaints to the Sessions, when Chief Justice *Hyde*, and Judge *Wyndham* were present; and it was ordered, That they should be joined again, and relieve their poor together: But after at another Sessions, when *Sir J. Robinson* was Chairman, they ordered that they should be severed. The Court quashed the last Order upon Motion. 1. Because the Justices of Peace cannot intermeddle to alter an Order made in Sessions, where the Judges are

are present, for by the Statute the Sessions ought to adjourn Matters of Difficulty to the Judges of Assize, because they have the greater Power, and their Orders are of greater Force. 2. Because before the Statute 43 *Eliz.* no Power was in the Justices of Peace nor Constables concerning the Poor; So that it is a new Law, and they have not by that Law any Power to sever Parishes. *Term. Trin. 11 Car. 2. B. R. Sinderf. 1. p. 292. Pl. 9.* The King against the Inhabitants of *Ratcliffe, Keb. Rep. pt. 2. p. 56. Pl. 20. p. 69. Pl. 41. S. C.*

D. was indicted at the Sessions of the Peace, for speaking scandalous Words of Sir *J. K.* a Justice of the Peace, *viz.* Sir *J. K.* is a buffle-headed Fellow, and doth not understand Law, he is not fit to talk Law with me, I have baffled him, and he hath not done my Client Justice. The whole Court was of Opinion, That this is Scandal upon the Government; and 'tis as much as to say, That the King had appointed an Ignorant Man for a Justice of Peace, for which an Indictment will lie, and gave Judgment accordingly. *Term. Mich. 3 Jac. 2. B. R. Modern Rep. 3d pt. p. 139.* The King against *Darby.*

A. was indicted for shooting with Hail-shot, contray to 2 & 3 *Ed. 6. ca. 14.* found before Justices of Peace at the Sessions, and Judgment *quod forisfaceret 10 l.* Error brought in *B. R.* and Error assigned, That the Justices of Peace had no Power given by this Statute; and their Commission only gives them

Justices of Peace.

them Power concerning the Peace, and therefore this Offence is to be examined by Commission of Oyer and Terminer. *Per. Cur. Prima facie*, it seems they had no Authority: But were unwilling to determine it: But reversed the Judgment, because by the Indictment it did not appear where the Offence was committed, for that is where the Party stood, or was, when he shot, not where the Object he shot at was. *Term. Mich. 3 W. & M. B. R. Shower's Rep. p. 33.* The King and Queen against *Alsop. Ante 133.*

By 12 R. 2. *ca. 10.* Justices are to have 4 s. a Day, and the Clerk 2 s. a Day.

Justices of Peace cannot by Law hold Cognizance of Pleas upon Penal Statutes, without an express Power given them by those Acts. *Term. Hill. 6 W. 3. B. R. Modern. Rep. p. 379.* The King against *Buggs.*

Error in Judgment on Indictment for Usury found before Justices of Peace of *Middlesex* at their Quarter-Sessions, for that by the Statute they have no Jurisdiction given them thereof, but they have for Extortion, which is a Crime at Common Law, which Usury is not, but made so by Act of Parliament, and where a Penalty is created by Act of Parliament, the Letter thereof must be strictly pursued: And Judgment was reversed thereon.

Leather.

A Currier bought two Hides of tann'd Leather of Persons unknown, and after curry'd them with Oil and Tallow, and other Things necessary, and after shaved and dyed them; and so being wrought, sold them. The Court held, That this is a buying and selling by Whole-sale, and a Currier may not buy nor sell by Whole-sale, within Statute 1 Jac. 1. ca. 22. *Term. Trin. 16 Car. 1. Cro. Car. p. 587. Lodge against Hollowell. S. C. Jones's Rep. p. 467. Pl. 1.*

Lewd.

Lewdness.

A Constable in *London* receiving Information, That *J. S.* was at a House committing Adultery with another Man's Wife, he went to the House. with several to assist, and arrested him and carried him to the Compter. *J. S.* brought an Action of Assault and Battery and False Imprisonment against the Constable, who pleaded in bar of the Action, That there was a Custom in *London*, that if Information be given to any Constable in *London*, that any Person within their Jurisdiction be committing Adultery with any Woman, that he should call the Beadle and any others of the same Parish, and go to the House, and if he found the Man in Adultery, should apprehend him and carry him to the Compter, and justified his taking and committing *J. S.*

In this Case *Townsend* declared, That Adultery is a thing Temporal as well as Spiritual, and against the Peace of the Land; for the Peace of the Land is, That every Man should be in Peace in his own House with his Wife, Children, Goods and Chattels, and that to do a wrong to the disquiet of any of them is a Breach of the Peace, and the publick Weal of the City or Borough where they do it: And that the committing of Adultery with a Man's Wife, is a greater Breach of the Peace than entering his House and robbing him. And *Catesby* also

also agreed, That at Common Law it is a Breach of the Peace. *Term. Hill. 1 H. 7. f. 6 & 7.*

A Woman in S. kept a common Bawdy-House, and J. S. resorted thither, and kept Company with lewd Women. The Constable, with others to assist him, at 12 at Night arrested John S. in the Bawdy-House for a breach of the Peace. J. S. brought an Action of false Imprisonment; and the Constable pleaded the said matter in Justification, and it was allowed by all the Judges to be a good Justification. *Mich. 13 H. 7. f. 10. b. Pl. 10. Br. Title Trespass. No 432.*

My Lord Chief Justice Coke saith, That the Leets had power to enquire of and punish Fornication and Adultery by the Name of *Lecherwite*; and that it appears often in the Book of *Domesday*, That the King had the Fine assessed for those Offences, which were assessed in the King's Courts. *Co. 2 Inst.*

488. Vide Rep. 12. p. 43.

W. was indicted before the Justices of Peace, for that he, being of ill Fame and dishonest Conversation, was a Night-walker; and moreover, that he, such a Day, did frequent a Bawdy-House. This was removed into B. R. and he pleaded Not Guilty, and afterwards a Verdict for the King, and Judgment against him, notwithstanding he moved in Arrest of Judgment. *Term. Trin. 2 Ca. 1. Latch. Rep. f. 173. Willow's Case,* Exception to the Night-Walking, but not to the

the Bawdy-House, only that it was not within the Justices Jurisdiction. *Sed vide Popb. Rep. p. 208.* the same Case. So saith *Benloe* in the same Case, *p. 301. Term. Hill. 2 Car. 1. B. R.*

Sir C. S. was indicted for several Misdemeanours, and particularly for shewing his naked Body in a Balcony in *Covent garden* to a great multitude of People. And the Court declared, That it was high Time to punish such prophane Actions committed against all Modesty, which were then grown so frequent, as if not only Christianity but even Morality were utterly cast off; and fined him 2000 Marks, imprisoned him for one Week, without Bail, and bound him to the Good Behaviour for three Years. *Mich. Term. 15 Car. 2. B. R. 1 Siderf. Rep. p. 168. Pl. 29,* The King against Sir *Ch. Sedley*, *1 Keb. p. 260. S. C.*

M. S. was indicted at the *Old Baily*, for that *carnaliter cognovit A. W.* an Infant, under the Age of ten Years: And because upon Evidence to the Jury it was not proved, That he entered the Child's Body, (but the contrary) altho' he very much abused her, the Jury would not find him guilty of the Felony: But by the Advice of Judge *Jones* and Judge *Berkley*, he was indicted of Battery for abusing the Infant, in lying with her, and was convicted and adjudged, for this Misdemeanour to be committed to Prison, there to abide during the King's Pleasure, fined 200 Marks

Letwiness.

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Marks, to stand upon the Pillory in *Chancery-Lane* in *Middlesex*, near the Place where the Fact was committed, with a Paper upon his Head, signifying the Cause, and to be bound with able Sureties to the Good behaviour during Life.

Libels.

Libels. Vide ante 137.

S. Published a Libellous Letter, scandalous to *M.* before a Woman *M.* intended to Marry; for which he was indicted before the Justices of Peace at *Guildhall, London*, and Judgment against him. *S.* brought a Writ of Error, and two Errors were assigned. 1. That it was but a private Letter, and not punishable by Indictment. 2. If it be, yet not before Justices of Peace, but Commissioners of Oyer and Terminer, who have Words in their Commission *de propalationibus verborum*. Tho' *Twisden, Kelynge* and *Wyndham* held, That he was indictable, because it tended to a Breach of the Peace, and before Justices of Peace, as well as Justices of Oyer and Terminer. *Term. Mich. 16 Car. 2. B. R.* The King against *Summers* and *Summers*. *Siderf. Rep. 1. p. 270. S. C.*

S. Writ a scandalous Letter to *Hatto Rich*, Brother to the Earl of *Warwick*, who was indebted to him 300 *l.* after *Rich* had obtained a Protection, and at last taken the King's Bench Prison: In which Letter are these Words, That if he had any Honesty, Civility, Sobriety, or Humanity, he would not deal so by him; and that he would on the Day be damn'd, and be in Hell for the Chea

Cheating, or Words to the like effect; and cited several places of Scripture to make good his Allegations. The Court of *B. R.* judged this Letter scandalous, being Provocative, and tending to the breach of the Peace; and *S.* was fined 40 Marks. *Term. Mich. 22 Car. 2. B. R. Raymond's Rep. p. 28. The King against Saunders.*

Maintenance. Vide **Poor's Rates, &c.**

L

Wm.

Manlaughter.

SIR J. C. and his Man were playing at Foils, and the Chape of Sir J's Scabbard fell off, unknown to him, upon a Thrust, so that the Rapier went into his Man's Belly, and killed him. This is Manlaughter, and not Chancemedley: For seeing such Acts are not warranted by Law, the Parties that use them ought at their own Perils to prevent the Mischief that may ensue, for Consent will not change the Case: And therefore tho' there were no Intention of doing Mischief, yet the Thrust being voluntary, was an Assault in Law, and Death ensuing it was the Opinion of all the Judges, That it was Manlaughter. *Term Pasch. 22 Car. 1. B. R. Aley's Rep. p. 12. Sir John Chichester's Case, p. 337. S. P. Term. Trin. 1652.*

A. B. and C. were indicted upon the Statute 1 Jac. 1. ca. 8. for Stabbing D. and the Indictment was, That A. stabbed him, and B. and C. were present, abetting, &c. and *contra formam Statuti*: And A. was hanged and B. and C. respited, and afterwards admitted to their Clergy: For tho' in Judgment of Law, every one that is present, &c. is Principal, so that the Indictment may recite that any of them did make the Thrust, and the Jury should find them equally guilty at the Common Law; yet in Construction of this Statute, which is so Penal, shall be extended only to such as really and

actually made the Thrust, and not to those who by Construction of Law only may be said to make it: For the End of the Statute was to restrain the Rage and Cruelty of such Persons as would suddenly stab another. So resolved, *B. R. Term. Hill. 23 Car. 1. Aleyn's Rep. p. 43. Page and Harwood's Case.*

M. coming into his House, found *G.* in the Act of Adultery with his Wife, and immediately took up a Stool and struck *G.* on the Head, so that he instantly died. The Court were all of Opinion, That it was but Manlaughter, the Provocation being exceeding great; and it did not appear that there was any precedent Malice. And not like that Case, where the Husband being informed of the Adulterer's familiarity with his Wife, said he would be revenged of him; and afterwards finding him in the Act, killed him. That was held Murder by Judge *Jones, Term. Mich. 23 Car. 2. B. R. Venris's Rep. 1. p. 158. Maddy's Case.*

See Title **Murder**. *Row's Case* out of *Kelynge's Rep.*

J. R. was indicted for killing his Wife: and upon the Evidence the Case was, That he found a Soldier's Pistol in the Street, and shew'd it to one, and they two took the Gun-stick, and put it into the Pistol, and went down into the Muzzle of the Pistol, by which they thought it was not charged; and the Wife of *J. R.* standing before him, he pulled up the Cock, and the Pistol went

off, and kill'd her; upon which he cry'd out, Oh I have killed my dear Wife! and call'd in his Neighbours. It was holden, That this was Manslaughter, and not only Mis-adventure. At the Sessions in the Old Bailey, 13 January 1664. 16 Car. 2. Kelynge's Rep. p. 41. James Rampton's Case.

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Market-Overt.

A Sale in a Market-Overt shall not bind him who hath Right to Goods, if the Sale be by Fraud; or if the Person who buys the Goods hath Notice that the Property is another's. *Term. Hill. 33 H. 6. f. 5. Pl. 15.*

Shops in *London* are Markets-Overt for Things to be sold there which concern the Trade of the Owner, but not otherwise; And therefore where Plate was stoln, and afterwards sold in a Scrivener's Shop, the Property was not altered; nor if it had been sold to a Gold-smith in a back Shop, but the Sale must be in an open Shop, where every one that passeth by may see. So resolved, *Hill. 38 Eliz. at the Sessions in the Old Bailey. Co. Rep. 5. f. 83. b. S. C. Popb. Rep. p. 84. S. C. 1 And. 344. Pl. 319. S. P. Resolved in Hetley's Rep. p. 62, 63. Panton against Hassel. S. P. in Godb. Rep. Term. Hill. 29 Eliz. p. 131. Pl. 149. Kelynge's Rep. p. 35. S. P.*

Sale to a Pawn-broker, tho' in his Shop, alters no Property. *Kelynge's Rep. p. 50.* It is not a Market-Overt.

Murder.

Justices of Peace may enquire of Murder. The Servants of the Bishop of *Lincoln* were indicted before the Justices of Peace in the County of *Rutland*. *Term. Pasch. 3 H. 7. f. 5. b. Pl. 2.* And it is very evident by the Statute 2 & 3 *Ed. 6. ca. 24.* That Persons may be indicted for Murder before the Justices of the Peace. And *Term. Pasch. 5 Ed. 6. Dyer f. 68. b. 69. a.* all the Judges of the King's Bench held clearly, That Justices of Peace have Authority to enquire of Murder, because it is Felony. *Term. Pasch. 35 H. 6. f. 57. b. 58. a. Term. Trin. 22 H. 7. Kelynge's Rep. p. 91. b. Pl. 2. 10 Ed. 2. ca. 2.* inables Justices of Peace to hear and determine Felonies.

Co. 3 Inst.
p. 56.

Killing a Felon who will not be arrested, or killing him who is carrying to Gaol for Felony, and attempts to escape, is not Murder. *Lib. Assiz. 22. Pl. 55.*

It is no Murder in a Gaoler to kill his Prisoner, who attempts to kill him; and endeavoureth thereby to escape. *Lib. Assiz. 22. Pl. 55.*

It is no Murder to kill Persons who attempt to rob or murder in or near the Highway, or in a Man's own House, or to commit Burglary; but in all such Cases the killing such Persons is to be justified. *Lib. Assiz. 22. Pl. 55. 26 Pl. 23 & 32. Stat. 24 H. 8. ca. 5. Mich. Term. 2 Jac. 1. B. R. Co. Li. 5. f. 91. b.* Resolved in *Seymour's Case*, That if Thieves come to a House

to rob or to murder, and the Owner or his Servants kill any of the Thieves, that is not Felony, nor doth he forfeit any thing. *Term. Pasch. 13 Jac. 1. Rolle Rep. 1. p. 182. B. R.* The same agreed by all the Judges, *Co. Inst. p. 56.* to the same purpose.

If Bailiffs come to a House to arrest the Father, and the House is lock'd, and they attempt to break in, and the Son shoots and kills one of them; this is not Murder but Manslaughter. *Jones 429. Pl. 1. Term. Pasch. 15 Car 1. Cro. Car. p. 537. Pl. 2. Mar. Rep. p. 3. Pl. 7.*

If a Felon be condemned to be hanged, and the Sheriff put him to Death in other manner than according to the Sentence pronounced; it is Felony in the Sheriff. *Term. Pasch. 35 H. 6. Pl. 2. f. 58. a. & b.*

Killing another in a Man's own Defence, must be upon such a Necessity, that it must be adjudged to be inevitable; it will not otherwise excuse. And in this Case it is not material who strikes first, but if he that kills the other doth flie as far as he can to save himself without killing the other, and is then in such a streight that he cannot flie further, and then he kills the other; this is in his own Defence. *Fitz. Coron. N^o 284, 286, 297. Lib. Affiz. Pl. 31.*

But if there were Malice before the Flight, it will not excuse. *Fitz. N^o 287. Kelynge's Rep. p. 58.*

A Man strikes another to the Ground, then draws his Knife to kill him; he upon the Ground draws his Knife to defend him-

Kellewey's
Rep 136.
Pl. 120.
è contra.

self, and the Assailant falls upon the Defendant's Knife and is killed, the Defendant is not guilty of Murder. *Lib. Affix. 44. Pl. 17. Kellew. Rep. 108. Pl. 27.*

If two Men play together with Sword and Buckler, without the King's Commandment, tho' by their own Consent, and one kills the other; this is Felony. *Term. Pasch. 11 H. 7. f. 23. a. Pl. 14.*

If *A.* wrestles with *B.* and *A.* gives *B.* such a Fall that he dies of it; this is not Felony. So if a Man casts a Stone over a House and kills a Man; this is not Felony: But in both Cases the Goods of him who kills the other are forfeited. *Kellew. Rep. p. 108. Pl. 27. 136. a. Pl. 120.*

A. and *B.* are fighting, and *C.* coming to part them, is slain by one of them; this is Murder and not Manslaughter. *Lib. Affix. 22. Pl. 71. Term. Hill. 2 & 3 P. & M. Dyer 128 b. Pl. 60.*

The Reason that governs these and all such Cases is, Where the Act in which Death ensues is lawful and where it is not lawful; for where the Act is lawful, and a Man is killed by Accident, that is Homicide by Misadventure; but where it is not lawful, it is Murder.

If *A.* commands *B.* to kill *C.* and he doth it; this is Murder. So if a Master corrects his Servant, or a School-Master his Scholar, so that the Servant or Scholar dies; it is Murder. *Kellew. Rep. p. 136. Pl. 120.*

Manslaughter is killing a Man feloniously without Malice prepense. Murder is the killing of a Man with Malice prepense. *Term. Mich.*

Mich. 4 & 5 Eliz. Plow. Com. f. 261. a, Dame Hales contra Pettite.

All wilful killing by Poison is Murder. Statute 1 Ed. 6. ca. 12.

J. S. intending to poison his Wife, consulted with A. A. how to effect it. A. A. buys Poison and delivers it to J. S. who puts it into a roasted Apple, and gave it his Wife, who was sick, and she eat part of it, and gave the rest to E. S. her Child by J. S. of about three Years of Age. J. S. seeing this, reproved his Wife for giving the Child the Apple, telling her, It was not good for so young a Child. To which his Wife answered, That it was better for such Infants than for her. The Child eat it, and J. S. did not hinder it, lest he should have been suspected: And after the Wife recovered, and the Child died. This was adjudged Murder in J. S. but A. A. was not so much as Accessary. *Term. Hill. 18 Eliz. Plow. Com. f. 473. b. 474. a. Sander's and Archer's Case.*

William Vaux at the Sessions of the Peace for the County of *Northumberland*, was indicted for voluntary poisoning *Nicholas Ridley*, which by *Certiorari* was removed into B. R. and there it was resolved, That tho' *Vaux* was not present when *Ridley* took the poison; yet he having advised and perswaded him to take it, he was a Principal Murderer; and that if one had procured *Vaux* to do it, such Person had been Accessary before. So that in this Case, here is Principal and Accessary, both absent at the

the Time of the Felony committed. *Term. Pasch. 33 Eliz. B. R. Co. Li. 4. f. 44. a. Vaux's Case, Kelynge's Rep. 52, 53.*

The Husband of *A. G.* being sick, and an Electuary prescribed by the Doctor and prepared by the Apothecary, and sent to his House. *A. G.* with intent to Poison her Husband, mixeth Rats-bane with it: The Husband and several others eat of it, and were all very ill with it, but recovered. The Doctor was complained to: He sent for the Apothecary, and accused him; who to clear himself, took a Knife and stirred up the Electuary, and eat of it himself, and he died. This was adjudged Murder by all the Judges. *Mich. Term. 9 Jac. 1. Co. Li. 9. in Agnes Gore's Case.*

There it was resolved, That if *A.* puts Poison into Wine, or any thing else, to poison *B.* and sets it in a Place where he supposeth *B.* will come and drink it; and by accident *C.* (to whom *A.* hath no Malice) comes and drinks it and dies, that is Murder in *A.* for the Law couples the Event with the Intention, and the End with the Cause. But if one prepares Rats-bane to kill Rats and Mice or other Vermine, and leaves it in certain Places to the same purpose with no ill Intent, and one finding it, eats it and dies; this is not Murder.

A Woman, after she had two Daughters by her Husband, eloped from him, and lived with another Man, and afterwards one of her Daughters came to her, and she ask'd how her Father did; and she answered, He had a Cold. To which the Wife

re-

replied, Here is a good Powder for him, give it him in his Posset: She carried home the Powder, and told her other Sister of it, who in her absence gave the Powder to her Father in his Posset, of which he died. Upon Conference with all the Judges, it was resolved, That the Wife was Principal in the Murder, and the Man with whom she run away, he being proved to be advising in the Poison: But the two Daughters were in no Fault, they both being ignorant of the Poison. *Kelynge's Rep. p. 53.*

Several agree to Hunt in a Park, and to kill all who shall resist them. They enter, and kill one who ask'd what they did there: Tho' one of them was a quarter of a mile from the Place, and knew nothing of it, yet he was guilty of Murder as well as the rest. So adjudged. *Term. Pasch. 10 Eliz. Moor p. 86. Pl. 216. Lord Dacre's Case.*

A Man seized certain Goods of a *Frenchman* in time of War, at Sea, and carries them to his House: A Stranger pretending to be Deputy-Admiral, with a great number of People, comes to the House, and makes an Assault at the Gate of the House; a Gentlewoman came out of the House without any Weapon, and was killed by one of the Assailants. Chief Justice *Catlyn*, *Term. Pasch. 10 Eliz.* said, This was adjudged Murder. *Moor's Rep. p. 87. Pl. 227. Sir Richard Mansfield's Case. But Dyer Term. Hill 2 & 3 P. & M. f. 128. B. Pl. 60,* saith, The Judges were divided in Opinion; which

which may be true, and yet afterwards adjudged it Murder.

Kelynge's
Rep. put out
by Lord Ch.
Justice Holt,
at the later
end, in *Maw-*
gridge's Case.
p. 127 is
this Case
cited.

P. with others entered *Austerly* Park in *Middlesex*, to cut down Wood there; and he climb'd a Tree, and cut down some Boughs. *H.* the Woodward there, came riding into the Park, and seeing *P.* in the Tree, bid him come down, which he immediately did, and *H.* struck him two blows on the Back with his Cudgel: And then *P.* having a Rope tied about his middle, and one end of it hanging down, *H.* tied that end to his Horse's Tail, and struck two Blows upon his Horse's back, the Horse run away, and broke the Shoulder of *P.* whereof he instantly died, and *H.* hid his Body. This was adjudged Murder, because he made no Resistance, but came down out of the Tree when he was bid, and he might have been legally punished. *Term. Mich. 4 Car. 1. Holloway's Case*, reported *Cro. Car. p. 231. Pl. 6. Jones 14. p. 198. Pl. 12. Palmer p. 545.*

A. of the Age of thirteen Years was burn'd for killing of her Mistress, which is Petty Treason. *Term. Trin. 12 Ed. 3. Lib. Assiz. f. 37. Pl. 30.*

Plowd. Com.
f. 19. a.

A. within the Age of nine Years killed one within the Age of nine Years, and hid the Body. Adjudged Murder, but said to be no Murder if an Infant or a Man of no Discretion kills another. *Term. Hill. 3 H. 7. f. 1. b. Beverly's Case, Lib. 4. 126.*

If *A.* challengeth *B.* to fight with him, and the Challenge is sent, and received and

paw-

Murder.

857

pawfed upon, and they afterwards meet and fight, and Death ensues; this is Murder: And so it was adjudged by all the Judges *B. R. Term. Mich. 8 Jac. 1.* in *Morgan's Case*, 1 *Bulstr. p. 85, 86.* And it was there said by *Yelverton*, That it had been before so adjudged, in the Case of *Sir Thomas Lucas*, and that he was hang'd.

H. and another with him came to the Lodging of *B.* and when they were come in, the other Man took down a Sword in the Scabbard which hung there, and stood at the Door of *B.*'s Chamber with the Sword in his Hand, but not drawn, and kept the Door to keep *B.* from going out, till they might bring a Bailly to arrest *B.* for a Debt which he owed *H.* Upon some Discourse between *B.* and *H.* *B.* takes a Dagger out of his Pocket and stabs *H.* and kills him. This was adjudged Murder at Common Law, but not within the Statute 1 *Jac. 1. ca. 8.* against Stabbing. *Mich. Term. 1655. Style's Rep. p. 467. Buckner's Case.*

If upon an Affray made, the Constable, and others to assist him, come to suppress the Fray, and to preserve the Peace; and the Constable or any of his Assistants are killed; that is Murder. So resolved in *Young's Case*, *Term. Trin. 28 Eliz. Co. Li. 4. f. 40. b.*

If any Magistrate or Minister of Justice, in Execution of their Office, or in keeping the Peace, according to the Duty of their Office, are slain, that is Murder for their Contempt and Disobedience to the King

King and to the Law; for it is *contra potestatem Regis & Legis*. And therefore if a Sheriff, Justice of Peace, High Constable, Petty Constable, or Watchman, or any other Minister, or any other who comes to their Aid or to their Assistance in doing their Duty, are slain; that is Murder. And so it was resolved by all the Judges of England in *Mackallee's Case*. *Term. Pasch. 9 Jac. 1. Co. Li. 9. f. 68. a. b.* and in *Cro. Jac. 279, 280. Pl. 10. Co. 3 Inst. p. 52. Term. Pasch. 6 Car. 1. Cro. Car. p. 183. Pl. 1. Thomas Peas's Case*; and in *Kelynge's Rep. p. 66. Tho. Thomson's Case*: But there it is said, That the Person who kills had no Notice that the Person killed came to assist the Officer, else it will be but Manlaughter. And so adjudged in that Case.

A. goes with Malice prepenſe to fight with *B.* and to kill him. *C.* goes on a sudden, without Malice, to take the part of *A.* and they kill *B.* this is Murder in *A.* and Manlaughter in *C.* *1 Mar. at the Sessions in Salop, Salisbury's Case. Plow. Com. f. 100. a. b.*

There was a Conspiracy to kill *A.* and no Malice against his Servant: The Servant of *A.* is slain, the Malice against *A.* shall extend to his Servant, and the killing the Servant is Murder. So adjudged in *Salisbury's Case, ut supra.*

If twenty come with an Intention to kill a Man, tho' but one kills him, yet they are all guilty of Murder. *Term. Mich. 11 H. 4. 13. b. Pl. 30.*

Where

Where *Felo de se* is cast into the Sea, or Declared for
conveyed or buried in so private and secret Law. Trin.
Manner, that the Coroner cannot have a Term. 13 Jac.
view of the Body, and by consequence can- 1. Noy Rep.
not enquire of it; the Justices of Peace and p. 87. Rolle's
all others, who have Power and Authority Rep. 1. p. 217.
to enquire of Felonies, may take a Present- Pl. 17.

ment of it, because it is Felony, and that
will entitle the Crown to his Goods and
Chattels. *Term. Pasch. 43 Eliz. B. R. Re-*
solved in Foxley's Case, Co. Li. 5. 110. b.
Term. Hill. 2 Car. 1. Poph. Rep. p. 204. Roll.
Rep. 1. Pl. 17. The same Resolution, with
his Addition by Judge *Houghton*, That it
ought to be presented and found at the Ses-
sions of the Peace. This was *Term. Trin.*
13 Jac. 1. and Term. Mich. 15 Car. 1. B. R.
Newman's Case, Rolle's Abr. p. 96. Pl. 3.

A Man *non compos mentis* shall not lose Kelynge's
his Life, nor forfeit any Thing for Murder Rep. p. 53.
or Felony.

Term. Mich. 21 H. 7. f. 31. b.
Pl. 16. Term. Pasch. 4 Ed. 6. Plow. Com. f. 19. a.
F.N.B. f. 202. b. Term. Pasch. 21 Jac. 1. Rolle's
Rep. 2. p. 324. Rolle's Abr. 2. p. 547. No 5.
Term. Pasch. 1 Jac. 1. B. R. Co. Rep. 4. p. 124. a.
Beverley's Case, de non compos mentis. Term.
Pasch. 14 Jac. 1. Hob. Rep. p. 134. Weaver versus
Ward. Co. Li. f. 247. b. Term. Mich. 4 & 5
Eliz. Plow. Com. f. 260. a. Hales versus Petite.

If a Man that is a Lunatick stabs himself,
or otherwise wounds himself mortally, and
after that becomes of sound Mind, and then
dies of his Wounds, he in that Case forfeits
nothing, because the Law respects the Con-
dition he was in, when he wounded him-
self,

self, and not what he was in when he died.
Fitz. Abr. Tit. Coron. f. 217. Pl. 244. Term. Pasch. 22 Ed. 3. Term. Mich. 4 & 5 Eliz. Plow. Com. f. 260. a. Hales versus Petite.

A Lease for Years is made to Husband and Wife, the Husband is *Felo de se*, the Lease is forfeited. So adjudged *Mich. 4 & 5 Eliz. Plow. Com. f. 258. Dame Hales contra Petite.*

Debt due to *Felo de se* upon simple Contract, is not forfeited to the Crown. *Term. Pasch. 9 Eliz. Dyer f. 262. a.*

A Man who is bound with two Sureties for 40 *l.* to be paid at two Days, by Indenture sold them Beasts for 40 *l.* paid, provided, That if he saved them harmless, the Sale should be void. He failed the first Payment, and afterwards he became *Felo de se*, and the Beasts having been always in his Possession, adjudged that they were forfeited. *Term. Pasch. 4 & 5 Pl. & M. Dyer 160. b. Pl. 44.*

Palmer's Rep.
 p. 35. S. C.
 See Title Felony by Stat.

Three Men were indicted for conspiring to enter into the King's Park, and there hunting, killing and carrying away the King's Deer, and conspiring to kill any one who should oppose them, and making an Assault upon two of the Keeper's Servants, and killing one of them; and tho' it was proved, That the Keeper's Servants assaulted them first, and willed them to stand, and they fled, and one of the Keeper's Servants discharged a Piece at them, and yet they fled, till one of the Keeper's Men did hurt one of the Malefactors, and then, and not before, they killed

led one of the Keeper's Servants; yet it was adjudged Murder; for they being doing an unlawful Act, the Law implies the Malice, and they ought not to have fled, but to have yielded themselves to the Keepers when they were required. But if a Park-keeper kills any Person out of private Malice, who comes into a Park without any intent to hunt; that will be Murder in the Keeper. *Term. Mich. 17 Jac. 1. Roger Wormall, Rowland Tristram, and Thomas Banck's Case. Rolle's Rep. 2. p. 120.*

If two be fighting, and there are others looking on, who do not endeavour to part them; if one be killed, the Lookers-on may be indicted, and fined. *Popham and Yelverton* said so upon the Trial of one *Wilburn* for the Death of *Potter. Noy's Rep. p. 50.*

If one gives the Cause and Provocation, *Rolle's Rep. 1. p. 360. Pl. 12. S. C.* and sends a Challenge, and the other accepts it; and upon this they meet and fight; and he which sends the Challenge is killed:

This is Murther in the other; for it is not material in the Law, who begins the Quarrel (so as there was a former Quarrel) and the Malice still continuing until the last stroke given: For the difference is this, If they are once reconciled for the first matter, and afterwards they happen to fall out again suddenly, and do fight, and the one kills the other; this is but Manslaughter. *Term. Pasch. 14 Jac. 1. Bulstr. Rep. 3. p. 171. The King against Tavernor.*

F. and O. were in a Field fighting upon a Quarrel, Sir M. C. casually riding by, and
M seeing

seeing the Fight, and his Kinsman one of them, rides in, draws his Sword, thrust O. thro', and killed him. This is Manlaughter in Sir *M. C.* and Murder in *F. Term. Trin. 14 Jac. 1. Bulstr. Rep. 3. p. 206.* The King against Sir *Matthew Cary* and *Ferdinando Cary.*

A Man beats a Woman big with Child, and after the Child is born alive, but hath signs and bruises in his Body, received by the Battery, and afterwards the Child dies: This is Murder in him that beat the Woman. Otherwise if the Child be born dead. *Goldsb. Rep. p. 176. Pl. 110.*

A Woman Servant conspires with *J. S.* to rob her Mistress; *J. S.* comes in the Night, she hides him, and afterwards *J. S.* kills the Mistress. This is Murder in the Man and Petty Treason in the Woman-Servant. *Term. Mich. 10 & 11 Eliz. Moor. Rep. p. 91. Pl. 227.*

On *St. David's Day*, *D.* being a *Welshman*, and having a Leek in his Hat, on *R.* pointing to a *Jack of Lent*, there hanging with a Leek, and saying to *D.* Look on you Countryman, *D.* took up a Hammer and threw it at *R.* but missing *R.* hit and killed *M.* who had no Weapon drawn, nor having then stricken the said *D.* *D.* was indicted at the Sessions in the *Old Bailey*. And it was agreed by the two Ch. Justices Chief Baron *Jones*, the three other Barons and *Crawley*, That this was not within the Statute of Stabbing. *15 Car. 1. Jones's Rep. p. 432. Pl. 4. Williams's Case.*

A Man may be indicted for the Murder of a Man unknown. *Plow. Com. Term. Hill. 6 & 7 Ed. 6. f. 85. b. 2. Mar. p. 129. a.*

The Sentence in Murder can't be altered, but the Body is at the King's Pleasure. *Term. Mich. 4 Car. 1. Lit. Rep. p. 237.* In *Felton's Case*, who stabb'd the Duke of *Buckingham*.

Divers Men playing at Bowls, two of them fell out, and quarrelled, and a third who had not any Quarrel, in revenge of his Friend, struck the other with a Bowl, of which blow he died. This was held Manslaughter for this Reason, That it happen'd upon a sudden Motion in revenge of his Friend. *Term. Trin. 9 Jac. 1. Co. Rep. 12. p. 87.*

J. R. was indicted for the Murder of *W. D.* and a Special Verdict found, and removed by *Certiorari* into *B. R.* The Case was thus : *W. R.* Son of *J. R.* fighting with *J. D.* in a Field a Mile distance from the House of *J. R.* *J. D.* beat *W. R.* so as his Nose bled ; and he run home to his Father and complained to him of the Battery : Whereupon he instantly went into the Field, and finding him, call'd him Villain and other opprobrious Terms, and struck him with a little Cudgel, of which stroke he afterwards died. All the Court resolved, that this was but Manslaughter; for the going upon the Complaint of his Son, not having any Malice before, and in that Anger beating him, of which stroke he died ; the Law shall allow it to be upon that sudden occasion, and stirring of Blood, being

also provok'd at the sight of his Son's Blood; and tho' the distance was a Mile, yet it is not material. *Term. Hill. 9 Jac. 1. Cro. Jac. p. 296. Pl. 1. B. R. Co. 12. p. 8. S. C. Godb. p. 182. Pl. 260. S. C.*

On *Monday W.* beat *B.* on *Tuesday W.* flurled *B.* on the Nose; on *Wednesday W.* and *J.* walking by *B.*'s Shop, made a wry Mouth at *B.* upon which *B.* came out of his Shop with a short Sword behind the back of *W.* and gave him a great stroke upon the calf of the Leg, whereof he died. The Court directed the Jury to find this Murder. *Noy's Rep. p. 171.*

It was adjudged upon Statute *1 Jac. 1. ca. 22.* which makes desperate Stabbing to be Felony without Clergy, That because the Party had a Cudgel in his Hand that that was a Weapon drawn within the Intent of the Statute *5 Jac.* And the Party was thereupon arraigned of Felony and not of Murder. *5 Jac. 1.* At the Sessions in the *Old Baily, Godb. Rep. p. 154. Pl. 204.*

In *Dacre's Case*, who was arraigned for the Death of *William Dutton.* *Ley, Ch. Jus.* delivered it for Law, That if two Men voluntarily fight together, and the one kills the other, if it be upon a sudden Quarrel, that the same is but Manslaughter. And if two Men fight together, and the one flies as fast as he can, and he which flieth kills him who pursueth him, the same is *Se defendente.* Also if one Man assaults another upon the Highway, and he who is assaulted killeth the other, he shall forfeit neither Life

nor Lands, nor Goods, if he that killed the other fled so far as he could. *Term. Pasch.* 21 *Jac.* 4. *B. R. Godb.* p. 288. *Pl.* 415. *Dacre's Case.* *S. P. Co. Rep.* 5. 91. *b. Se-main's Case.* *Li.* 11. *f.* 82. *b. Lewis Bowle's Case.*

S. P. Kelynge's Rep. p. 55. Agreed by all the Judges, That no Words, be they what they will, are in Law such a Provocation, as if a Man kill another for Words only, it will diminish the Offence from Murder to Manslaughter. As suppose one calls another Son of a Whore, or gives him the Lie, and thereupon he to whom the Words are given, kills the other; this is Murder: But if upon Words both the Parties suddenly fight, and one kill the other, that is but Manslaughter. The Lord *Morley's Case.*

A Keeper of a Park and his Son finding divers Hunters and Malefactors in the Park with Weapons, willed them to yield themselves, who would not: But one of them shot an Arrow, and hit the Keeper's Son in the Breast, and after they closed and fought with the Keeper and his Son, and the Keeper was slain. This was held to be Murder by Sir *Christopher Wray*, Chief Justice of *B. R.* Sir *Edmond Anderson*, Chief Justice of *C. P.* Sir *Roger Manwood*, Chief Baron, and *Shute* Second Baron: For all Circumstances considered, that is, The assembling to do an Act unlawful, and coming with Weapons, and the first Assault offered by shooting an Arrow, doth declare their Intention to be malicious against such

as should withstand them. At an Assembly at *Serjeant's Inn* in *Fleetstreet*, 16 December, 27 *Eliz.* *Savil's Rep* p. 67. Pl. 139.

Sir *H. F.* Bart. was indicted as Kt. for Murder of one whom *N.* feloniously murdered, and that Sir *H. F.* was present, aiding and assisting: Upon this Sir *H. F.* being arraigned, said, That he was never Knighted; which being confessed, the Indictment was held not to be sufficient; and he was indicted *de novo*, as Baronet: And upon his Trial it appeared, That he was arrested for Debt, and that *N.* was his Servant, and in seeking to rescue him, as was pretended, he killed *S.* but because the Warrant to arrest him was by the Name of Sir *H. F.* Knight, and he never was a Knight, it was held by all the Court, That it was a variance in an essential part of the Name; and *S.* had no Authority by that Warrant to arrest Sir *H. F.* Bart. So it is an ill Warrant, and the killing an Officer in executing that Warrant, cannot be Murder, because no good Warrant. But upon the Evidence it appeared clearly, That Sir *H. F.* upon the Arrest obeyed, and was put into an House before the fighting between the Officer and his Servant. And he was acquitted. *Term. Trin. 10 Car. I. Cro. Car. p. 371. Pl. 6.* Sir *Henry Ferrey's Case*, *S. C. Jones's Rep. p. 346.*

Sir *C. S.* and *A.* were indicted and tried for killing one of the Bailiffs who arrested the said *S.* near *Charing-Cross*. And the Court resolved, 1. That all that were present and

assisting the said S. knowing of the Arrest, were Principal Murderers. 2. That tho' the Truth of the Case was, That Sir C. S. was arrested and carried out of the Company by some of the Bailiffs before the Wound given to one of the Bailiffs, whereof he died; yet Sir C. S. was a Principal Murderer. 3. That if any not knowing the Cause of their struggling, but because he sees Swords drawn, and to the intent to prevent mischief (which was the Case of A.) comes in and defends the Party arrested; that is not Murder in him. A. was acquitted, and Sir C. S. was pardoned. *Term. Mich. 15 Car. 2. B. R. Siderf. 1. p. 159.* The King against Sir Charles Stanley, of the Earl of Derby's Family, and one Andrews. *Kelynge's Rep. p. 86. S. C.*

B. was indicted for intending to murder the Master of the Rolls, and for offering 100 l. to J. S. to do it; and for saying, That if he would not, he would do it himself: He was convicted, and it was moved, That this being an Intent only, was not indictable. But the Court declared it was a very great Offence and fineable, and he was fined 1000 Marks, committed to Prison for three Months, and to find Sureties for his good Behaviour during his Life. *Term. Mich. 16 Car. 2. B. R. Levinz. Rep. 1. p. 146. Bacon's Case.*

E. R. was indicted for killing N. R. his Brother. And upon the Evidence given, it was resolved by Chief Justice *Bridgman*, and Judge *Kelynge*, That if one gives

wounds to another, who neglects the Cure of them, or is disorderly, and doth not keep that Rule which a Person wounded should do: Yet if he dies, it is Murder or Manslaughter, according as the Case is, in the Person who gave the wounds; because if the wounds had not been, the Person had not died; and therefore Neglect or Disorder in the Person who received the wounds, shall not excuse the Person who gave them. 14

October. 14 Car. 2. At Newgate Sessions, Kelynge's Rep. p. 26. Edward Pew's Case.

J. L. being indicted for Murder, upon the Evidence it was agreed, That if one Man kill another, and no sudden Quarrel appeareth; this is Murder; and it lieth upon the Party indicted to prove the sudden Quarrel. 14 *Oct. 14 Car. 2. At Newgate Sessions. Kelynge's Rep. p. 26. John Legg's Case.* In the same Case it was further agreed, That if two Men fall out in the Morning, and meet, and fight in the Afternoon, and one of them is slain; this is Murder: For there was Time to allay the heat, and their After-meeting is of Malice, 14 *Oct. 14 Car. 2. At Newgate Sessions. Kelynge's Rep. p. 27.*

If an Officer or other Person kill another in preserving the Peace; or a Parent, Master or School-Master, kill his Child, Servant or Scholar, in chastising or correcting him; it is inquirable, whether in preserving the Peace it was not committed wilfully and on purpose, under pretext of keeping the Peace; and as to a Master or Parent, whether

her it was besides his or their intent or purpose; for the Circumstances may make it Murder. *Kelynge's Rep. p. 28.*

In Murder, if Husband and Wife join in it, they are both equally guilty. So resolved by all the Judges, 13 June, 16 Car. 2. *Kelynge's Rep. p. 31.*

A. B. was indicted for murdering her Male Bastard-Child: And upon the Evidence it appeared, That she lived in a Chamber by her self, and went to Bed on Thursday Night well, without any pain, and in the middle of the Night she awaked full of pain, and knocked for some Body to come to her; and one Woman heard her knock, but came not to her; and the same Night she was delivered of a Child, and after she put the Child in a Trunk, and did not discover it till Friday Night following: This being found specially 31 Aug. 16 Car. 2. before Chief Justice *Bridgman*, Judge *Kelynge*, and Recorder *Wylde*, to have Advice of all the Judges, whether that knocking for help at the time of her Travel (tho' she concealed it after one Day) exempts her from the Statute, for there was no sign of any hurt upon the Body of the Child. It was agreed by the Judges, That if there be an intent in the Woman to conceal the Child, then it is Murder by the Statute, tho' in Truth the Child was dead-born. But if there was no intent to conceal it, or if she confess herself with Child beforehand, and after she is surpris'd and delivered, no Body being with her; this is not within the Statute,

Statute, because there was no intent to conceal it; and therefore if there be no sign of hurt upon the Child, it is no Murder. *Kelynge's Rep. p. 32. Ann Davis's Case.*

If upon Words two Men grow to Anger, and afterwards they suppress that Anger, and then fall into other Discourse, or have other Diversions for such a space of Time, as in reasonable intendment, their heat might be cooled, and some time after they draw one upon the other and fight, and one is killed; this is Murder, because being attended with such Circumstances, as it is reasonably supposed to be a deliberate Act, and premeditated Revenge upon the first Quarrel: But the Circumstances of such an Act being matter of Fact, the Jury are Judges of those Circumstances. Agreed by all the Judges at *Serjeant's-Inn in Fleetstreet*, 28 April 1666. 18 Car. 2. *Kelynge's Rep. p. 36.*

H. H. was indicted at the Sessions at the *Old Baily*, 25 April 1666. 18 Car. 2. where a Special Verdict was found, That *J. B.* and two others, without Warrant, impress a Man unknown to serve the King in his Wars against the *Dutch*: That thereupon, after the unknown Man was impress, he, with the said *J. B.* went together quietly into *Clotb-fair*, and *H. H.* and three others pursued them, and overtaking *J. B.* and the impress Man, and the two other Men, required to see their Warrant; and *J. B.* shewed them a Paper, which *H. H.* and the three others said was no Warrant; and immediately

mediately *H. H.* and the three others drew their Swords to rescue the said imprest Man, and did thrust at the said *J. B.* and thereupon the said *J. B.* and the two others with him did draw their Swords and fight together, and *H. H.* did give a Wound to the said *J. B.* whereof he instantly died. This was removed into *B. R.* and adjudged to be Murder. *Kelynge's Rep. p. 59, 60, 61, 62. Hopkin Hugget's Case. Sed vide ibid. 137. contra.*

J. G. was indicted for the Murder of *W. G.* his Apprentice. The Jury found it specially, That *J. G.* his Master commanded him to mend certain Stamps, being part belonging to his Trade, which he neglected to do; and his said Master asking him why he had not done it, and that if he would not serve him, he should serve in *Bridewell*; and *G.* the Servant replying, That he had as good serve in *Bridewell*, as serve the said *G.* his Master; the said *G.* without any other provocation, struck his Apprentice with a Bar of Iron which he had in his Hand, and broke his Skull, of which he died. All the Judges of *B. R.* and *Bridgman*, Chief Justice of *C. B.* were of Opinion, That this was Murder; for if a Father, Master or School-Master, will correct his Child, Servant or Scholar, they must do it with such Things as are fit for Correction, and not with such Instruments as may probably kill them. At the Sessions at the *Old Bailey*, 10 Oct. 1666. 18 Car. 2. *Kelynge's Rep. p. 64. John Grey's Case.*

One

One S. being chiding with his Servant, upon some cross Answer given him by his Servant, he having a hot Iron in his Hand, run it into his Servant's Belly, of which he died, and it was adjudged Murder. *Kelynge's Rep. p. 64.*

A Woman kick'd her Child, and stamp'd upon her Belly, whereof she died; adjudged Murder. *Kelynge's Rep. p. 64.*

At the Sessions of the Peace held at Guildhall, London July, 5 Ann. *John Mawgridge* of London, Gent. was indicted for killing *William Cope* Gent. which Indictment being delivered to the Justices of Gaol-Delivery for *Newgate*, he was arraigned thereupon and pleaded not guilty, and the Jury found this Special Verdict, That *William Cope* was Lieutenant of the Queen's Guards in the Tower, and the principal Officer then commanding there, and was then upon the Guard in the Guard Room; and that *John Mawgridge* was then and there by the Invitation of Mr. *Cope*, in Company with the said *William Cope*, and with a certain Woman of Mr. *Cope's* Acquaintance; which Woman *Mawgridge* did then affront, and angry Words past between them in the Room, in the presence of Mr. *Cope* and other Persons there present, and *Mawgridge* there did threaten the Woman; Mr. *Cope* did thereupon desire *Mawgridge* to forbear such usage of the Woman, saying, That he must protect the Woman: Thereupon *Mawgridge* did continue the reproachful Language to the Woman, and demanded

Sa-

Satisfaction of Mr. Cope, to the intent to provoke him to fight. Thereupon Mr. Cope told him, it was not a convenient place to give him Satisfaction, but at another time and place he would be ready to give it to him, and in the mean time desired him to be more civil, or to leave the Company : Thereupon *John Mawgridge* rose up, and was going out of the Room ; and so going did suddenly snatch up a Glass Bottle full of Wine, then standing upon the Table, and violently threw it at him the said Mr. Cope, and therewith struck him upon the Head ; and immediately thereupon, without any intermission, drew his Sword, and thrust him into the left part of his Breast, over the Arm of one *Robert Martin*, notwithstanding the endeavour used by the said *Martin* to hinder *Mawgridge* from killing Mr. Cope, and gave Mr. Cope the Wound in the Indictment mentioned, whereof he immediately died. The Jury further say, That immediately, in a little space of Time, between *Mawgridge* his drawing his Sword and the giving the mortal Wound by him, Mr. Cope did arise from the Chair where he sat, and took another Bottle that then stood upon the Table, and threw it at *Mawgridge*, which did hit and break his Head ; that Mr. Cope had no Sword in his Hand drawn all the while ; and that after *Mawgridge* had thrown the Bottle Mr. Cope spoke not. The Record being removed into B. R. the Case was argued before all the Judges, and all of them, except Chief Justice *Trevor*, were of

of Opinion, That this was Murder. 1. Because it is plain here was Malice in *Mawgridge*; for Malice is a Design form'd of doing mischief to another, and he that designs and useth the Means to do ill, is malicious. *Co. 2 Inst. 42.* He that doth a violent Act voluntarily, doth it of Malice prepenſe. *Co. 3 Inst. 62.* If a cruel Act be done voluntarily, the Law will imply Malice: Therefore when a Man ſhall without any Provocation ſtab another with a Dagger, or knock out his Brains with a Bottle, this is expreſs Malice, for he deſignedly and purpoſely did him the miſchief. So that if the Bottle had killed Mr. *Cope* before he had returned the Bottle upon *Mawgridge*, that would have been Murder without all manner of doubt. And his returning the Bottle has no manner of influence as this Caſe is, for *Mawgridge*, by his throwing the Bottle, manifeſted a malicious Deſign. His Sword was drawn immediately to ſupply the miſchief the Bottle might fall ſhort of; and the throwing the Bottle by Captain *Cope* was juſtifiable and lawful; and tho' he had wounded *Mawgridge*, he might have juſtified in an Action of Assault and Battery, and therefore cannot be any Provocation for *Mawgridge* to ſtab him with his Sword.

Chief Juſtice *Holt* held, That no Words of Reproach or Infamy are ſufficient to provoke another to ſuch a degree of Anger, as to ſtrike or aſſault the provoking Party with a Sword, or to throw a Bottle at him, or ſtrike him with any other Weapon that may

kill

kill him ; but if the Person provoking be thereby killed, it is Murder ; and cited the Resolution of the Judges in Lord *Morley's* Case.

He also held, That no affronting Gestures are sufficient, tho' never so reproachful.

He also held, That if one Man be trespassing upon another, breaking his Hedges or the like, and the Owner or his Servant shall upon sight thereof take up an Hedge-Stake, and knock him on the Head ; That will be Murder, because it was a violent Act, beyond the proportion of the Provocation, as in *Holloway's* Case before.

He also held, That if a Parent or Master be provoked to a degree of Passion by some miscarriage of the Child or Servant, and he corrects him with a moderate Weapon, and by chance hits him an unlucky stroke, so as to kill him, that is Misadventure ; but if with an improper Instrument, it is Murder ; as in *Grey's* Case before.

He also held, That if a Man upon a sudden Disappointment by another, shall resort violently to that other Man's House to expostulate with him, and with his Sword shall endeavour to force his Entrance to compel that other to perform his Promise, or otherwise to comply with his Desire, and the Owner shall set himself in opposition to him, and he shall pass at him, and kill the Owner of the House ; it is Murder.

But he also held, That if one Man upon angry Words shall make an Assault upon another, either by pulling him by the Nose, or

or philipping upon the Fore-head ; and he that is so assaulted shall draw his Sword and immediately run the other through; that is but Manslaughter: For the Peace is broken by the Person killed, and with an Indignity to him that received the Assault: Besides, he that was so affronted might reasonably apprehend, That he that treated him in that manner might have some further Design upon him. He cited *Buckner's Case* before. Vide *S. C. Style's Rep.* 467.

He further held, That if a Man's Friend be assaulted by another, or engaged in a Quarrel that comes to Blows; and he, in the vindication of his Friend, shall on a sudden take up a mischievous Instrument and kill his Friend's Adversary; this is but Manslaughter.

He further held, That if a Man perceives another by Force to be injuriously treated, pressed and restrained of his Liberty, tho' the Person abused doth not complain or call for Aid or Assistance, and others out of Compassion shall come to his Rescue, and kill any of those who shall restrain him, this is Manslaughter; as in *Huger's Case* before.

He further held, That when a Man is taken in Adultery with another Man's Wife, if the Husband kill him, it is bare Manslaughter; as in *Manning's Case* before. *Keb. Rep. pt. 2. p. 829. Pl. 49. S. C.*

Vide Title *Forfeiture*, ante, p. 107.

Nuisance.

THE meer erecting of a Dove-coat, if there be no Doves kept in it, is no Nuisance. Holden by all the Judges. *Term. Mich. 14 Jac. 1. B. R. Godb. Rep. p. 284. Pl. 406. Vesey's Case.* The contrary adjudged, *B. R. 16 Jac. 1. in the Earl of Northumberland's Case, Reported in Pop. Rep. 141. Cro. Jac. 490. Pl. 11. Rolle's Rep. 2.*

N

Over:

Overseers of the Poor.

P. The Churchwarden of *Hadley*, was committed by the next Justices, as Churchwarden, without Bail, for refusing to give an Accompt of Money received and disbursed by him, and all such Things as concern his Office: Upon an *Habeas Corpus* he was discharged; for the Justices ought in their *Mittimus* to have set forth, That he was Overseer of the Poor, which by 43 *Eliz. ca. 2.* is annex'd to his Office as Churchwarden, and the Justices have no Power over him *quatenus* Churchwarden, but *quatenus* Overseer. *Term. Mich. 15 Car. 2. B. R. Keb. Rep. 1 pt. p. 574. Pl. 32. The King against Peck.*

Popists or Popish Recusants.

P. *M.* was indicted, That he being a convicted Recusant departed above five Miles from his abode against the Statute. He pleaded, That he informed *R. S. W. B.* and two other Justices of Peace of the County (the said *W. B.* being a Deputy Lieutenant there) that he had urgent Occasions to go to *London*, about Business concerning his Estate, and made Oath before them that it was true: Whereupon they by writing under their Seals, gave Licence to him to go to *London*, or to other Places, as his Business required, for six Months. All the Court were of Opinion, That this Licence was not good, for it ought to be by four Justices besides the Deputy-Lieutenant; and that his Assent ought to be by it self, without the other four: And further, because the Licence was not under their Hands as well as Seals. And lastly, because it was for urgent Business, but did not shew the Business in particular. *Term. Mich. 12 Jac. 1. Cro. Jac. p. 352. Maxfeild's Case.* The same Case is reported in *Moor's Rep. p. 836. Pl. 1127. and Rolle's Rep. 1 pt. p. 108. Pl. 47.* And *Rolle* saith, That Judgment was given for the King.

One *Thorowgood*, a Popish Recusant, being indicted came into Court, and brought with him a Testimonial of his Submission,

Papists or Popish Recusants.

according to 35 *Eliz. ca.* But the Court, before they discharged him, made him in the presence of the Court upon his Knees, make another Submission, according as the Clerk of the Crown read to him. And Judge *Jones* said to Judge *Whitlock*, That that was the Course of the Court. *Lateb. Rep. p. 16. Thoroughgood's Case.*

It was held upon a meeting of all the Judges, and *Manwood*, Chief Baron of the Exchequer, *Shute* and *Glinch* Barons, at *Serjeant's-Inn* in *Fleetstreet*, That if any pretend to have Power to absolve or perswade any from their Obedience, &c. That is Treason, altho' they did not move any to decline from their Obedience. And on the other side, if any Person did move another to decline from their Obedience, or to promise Obedience to any pretended Authority, &c. altho' that he did not pretend to have Power from *Rome*, yet it was Treason within Statute 22 *Eliz. ca. 1. Term. Pasche 22 Eliz. Savil's Rep. p. 3. Pl. 9.* This was the Case of *Campion* the Jesuit and others.

A Popish Recusant may conform at the Sessions of the Peace. *Term. Trin. 22 Car. B. R. Style's Rep. p. 26.* *Earl of Arundel's Case*, upon an Indictment against him for Recusancy at the Sessions, removed by *Comptrolari.*

Perjury.

A Man may be indicted of Perjury for making a false Affidavit, by the Common Law, tho' not upon the Statute 5 Eliz. ca. 9. made against Perjury, *Term. Mich. 22 Jac. 1. Rolle's Rep. 1. p. 79. Pl. 22. Term. Mich. 20 Jac. 1. Rolle's Rep. 2. p. 244. Vide Post, 183.*

M. was indicted upon Statute 5 Eliz. ca. 9. for Perjury, before a Commission for examining Witnesses in Chancery; and the Indictment was quashed in *B. R. 1.* Because it was not set forth, That the Commission was under the Great Seal; so that it might appear, That the Commissioners had Power to take an Oath. 2. Because the Indictment recited the said Statute, and shews in what particular the Oath was false, but did not shew what the Issue in Chancery was, so that it might appear, whether what was sworn was material to the Issue. *Term. Hill. 1 Jac. 1. Rolle's Rep. 2. f. 427.*

Perjury in a Witness is punishable by the Common Law. *Co. Rep. 12. p. 101. Hugh Danne's Case. Co. Inst. 3d pt. p. 164. Term. Mich. 6 Jac. 1. 2 Cro. p. 212. Pl. 40. C. S. P.*

One Price was indicted upon Statute Eliz. ca. 9. for Perjury, because he was produced as a Witness for the King, upon a Trial in an Information, and sworn, *&c.* Breaching the Oath and the falsity therein:

And the whole Court was of Opinion, That such a Witness was not punishable by way of Indictment. *Term. Trin. 4 Jac. 1. 2 Cro. p. 120. Pl. 2. Price's Case.*

L. F. was indicted upon 5 *Eliz.* for Perjury, in giving false Evidence to the Grand Inquest at *Wisbich* Sessions, upon an Indictment for a Rior. The Indictment of *L. F.* was removed into *B. R.* and *L. F.* was discharged of that Indictment: For that Statute has two Branches; The first against procurers of Perjury, and that is in matters depending by Bill, Writ, Action or Information; so that procuring of Perjury is out of this Branch. And the second Branch (upon which *L. F.* was indicted) provides against them who commit Perjury, by his or their Deposition, in any of the Courts abovementioned, or being examined *in perpetuam rei memoriam.* And altho' this Clause be General, and not restrained by any Words to such particular Suits, by Bill &c. as the first was; yet, in good Construction, this Branch shall have reference to the first, and shall be expounded by it for one part of the Act expounds the other. For otherwise the Party, who commits Perjury, shall be punished by the last Branch; and he that suborns and procures him to commit it, shall go unpunished which would be against Reason, and the Intention of the Makers of the Act. *Term. Mich. 40 & 41 Eliz. Co. Rep. 5. f. 99. Flower's Case. Term. Pasch. 30 Eliz. 3. Law. p. 201. Pl. 253. Matthews's Case, S. P.*

R. was indicted of Perjury upon 5 *Eliz.* ca. 9. supposed to be committed in his Answer in the *Star Chamber*, and his Examination upon Interrogatories there, but because he was not examined as a Witness, nor in *perpetuam rei memoriam*, he was discharged. *Term. Mich. 31 & 32 Eliz. Cro. Eliz. p. 448. Pl. 12. Ritber's Case. Term. Hill. 5 Jac. 1. Yelverton's Rep. p. 120. Sir Robert Miller's Case, S. P.*

A Man took an Oath in the Court of Requests, in a Business there depending concerning matter of Freehold, and was prosecuted for Perjury; And the Question was, Whether he was perjur'd or not, the Court of Requests having no Jurisdiction in matters which concern Freehold? Resolved by all the Judges of *England*, That tho' the Matter sworn was in Fact false; yet it relating to a matter of Freehold, whereof the Court of Requests had no Jurisdiction, it was not Perjury, and he was acquitted. *Term. Hill. 8 Jac. 1. Bulstr. Rep. 1. p. 107, 108.*

A. was prosecuted for Perjury, in making a false Affidavit before Sir Robert Rich, who was one of the Masters in Chancery, and ruled to be no Perjury, being upon an Affidavit, and not sworn in Court. *Latch Rep. p. 38. and 132. Luthers versus Holland. Vide ante 181.*

An Indictment at *Kingston upon Thames*, upon the Statute for Perjury, was quashed for two Causes. 1. It is not express

Perjury.

in what County *Kingston* is. 2. It doth not expresse how the Party was perjured, for it shews not in what Cause it was, nor that it was in giving any Evidence upon Oath as a Witness in any Cause. *Term. Trin. 24 Car. 1. B. R. Style's Rep. p. 116. Cro. Eliz. Term. Trin. 30 Eliz. p. 137. Pl. 7. Stedman's Case, and p. 148. Pl. 13. Fane's Case. Vide these Cases: And Term. Mich. 37 & 38 Eliz. Cr. Eliz. p. 428. Pl. 29. S. P.*

An Indictment of Perjury at the Sessions of the Peace, was quashed, because it did not appear, That any of the Justices, before whom it was taken, were of the *Quorum. Term. Trin. 24 Car. 1. Style's Rep. p. 123, 124.*

An Indictment upon Statute 5 *Eliz. ca. 9.* against Perjury, was quashed; because the Indictment saith, The Oath was taken before Baron *Atkins* and Serjeant *Turner*; but it doth not say where, whether at the Sessions or Assizes. *Term. Trin. 24 Car. 1. B. R. Style's Rep. p. 126.*

D. was indicted upon 5 *Eliz. ca. 4.* for Perjury; and the Indictment was, That *tacto per se sacro Evangelio falso deposuit*; but it was directly alledged, that he was sworn. The Indictment was discharged; for the Justice said, When such a heinous Crime was objected against one, it ought to be fully alledged, otherwise it is not good. *Term. Trin. 30 Eliz. Cro. Eliz. p. 105. Pl. 17. Dinslowe's Case.*

L. and H. were indicted upon the 15 Eliz.
ca. 14. for Perjury, and discharged, be-
cause the Indictment was *falsè & corruptivè*,
but not *voluntariè*. Term. Mich. 31 & 32
Eliz. Cr. Eliz. p. 147. Pl. 11. Lembro and
Hamper's Case, p. 201. p. 30. S. P.

Phea-

Pheasants and Partridges.

AN Indi&ment was preferr'd upon the Stat. 23 *Eliz. ca. 10.* for taking of Partridges *cum retis, &c. & alius.* Exception was taken to it, because there is no such Word as *retis*: And the Indi&ment was quashed for that Reason.

It being a Question, Whether such an Indi&ment might be taken before the Justices of the Peace, it was ruled, That Proceedings might be upon this Statute at the Sessions, by way of Indi&ment, or before a Justice by Examination of Witnesses; but the Justice can only take the Examination of the Witnesses, and bind over to the next Sessions. *Term. Pasch. 14 Jac. 1. 3 Bulstr. p. 178. The King against Rivet.*

POOR'S Settlements, &c.

H. Is an ancient Rectory and a Church Parochial. The Village of S. is an ancient Village, and parcel of the Rectory of H. and before the 43 *Eliz. ca. 2.* there was a Church in S. which had been used and reputed as a Parish, and had all Parochial Rights and Churchwardens, and that S. was two Miles from H. Resolved by all the Court, That S. is a Parish within the Statute 49 *Eliz.* and chargeable to maintain the Poor of S. and not of H. *Term. Mich. 3 Car. 1. Cro. Car. p. 92. Pl. 17. Hilton against Paul, S. C. Lit. Rep. p. 73. S. C.* And same Point *Hutt. Rep. p. 93. Term. Hill. 10 Car. 1.* The same Point adjudged again in the Case of *Nichols versus Walker and Carter*, reported in *Cro Car. p. 394. Pl. 6.* and in *Jones's Rep. p. 355. Pl. 4.*

The Parish of H. contains in it self two Members, B. and another; and B. hath a Chappel of Ease in it, wherein they use to bury, and had been long reputed a Parish of it self, but was indeed but a Member of the Parish of H. but had used to chuse Overseers of the Poor for it self. It was held, That Parishes in Reputation are within the 43 *Eliz. ca. 2.* and rateable to the Poor as well as other Parishes. *Term Pasch. 18 Jac. 1. Rolle's Rep. 2. p. 160. Warden versus Walker.*

Vide Title **Bastardy.** A Poor Bastard settled where his reputed Father had gained a Settlement. A

Style's Rep. p.
283. S. P.

A Child is chargeable to the Parish: the Grandmother being a Person of Ability, marries one D. He is a Grandfather, and liable to maintain, the poor Grand-child, within Statute 43 *Eliz. ca. 2. Term. Mich. 7 Car. 1. Bulstr. Rep. 2. p. 345.* Draper against the Town of *Glenfeild* in the County of *Leicester*. But it is otherwise if the Husband has no Estate with the Grandmother at the Time of the Marriage: But if an Estate descends to her after the Marriage, to which the Husband is intitled in the Right of his Wife; in such Case he shall be charged as Grandfather, according to Judge *Croke's* Opinion. *Bulstr. Rep. 2. p. 346, 347.* The City of *Westminster* against *Gerrard*. *Term. Hill. 7 Car. 1.*

Serjeant *Shaw* moved to affirm an Order made upon an Appeal to the Quarter-Sessions of the Peace for the County of *Essex*. The Case was this, *viz.* *John Pain* served an Apprenticeship at *Maldon*, where he married and had several Children. His Wife died, he married another Woman, who had a Term for Years in the Parish of *Heybridge*, where he lived for a Year and left *Maldon*, afterwards he returned to *Maldon*, was rated to the Poor, and lived there two Years, then he died. In a short time after his Death, his Widow and Children were removed by an Order of two Justices to *Heybridge*; from which Order they appeal; and by the Order of the Sessions they were declared to be Inhabitants of *Maldon*.

It was moved by Mr. *Pollexfen* to quash
this

this Order, because it doth not appear, That he gave any formal Notice in writing to the Overseers of *Maldon* when he returned from *Heybridge*; and therefore ought to be settled there, and not at *Maldon*; for being taxed to the Poor, will not amount to Notice: And he cited a stronger Case, *viz.* The Churchwardens of *Covent-Garden* certified under their Hands, That such a Person was an Inhabitant within their Parish; but because no Note was left with them pursuant to the Statute, notwithstanding such Certificate, he was held to be no Inhabitant within their Parish. And of this Opinion was all the Court. *Term. Mich. 3 Jac. 2. B. R.* The King against the Inhabitants of *Maldon. Vide Post, 191. contra.*

Order of Sessions in *Essex* for removing a poor Man and Family from *Maldon* to another Place, upon the account that he was a settled Inhabitant, by remaining above forty Days after taking an House, and being rated to the Poor there. Held by the Court, to make a good Settlement within the new Statute, tho' there was no Notice in Writing given to the Churchwardens; and that coming in publickly, by taking a House and being rated to the Poor, and so observed by the Officers of the Parish in their Parish-Book, is sufficient Notice; and the rather, because by the Preamble of the Statute, it is apparently meant only against private and clandestine Removals, and not publick ones, of which the Parish can take Notice it self. *Term. Pasch. 1 W. & M. B.*

B. R. Shower's Rep. p. 12. the Queen against Paire.

Dom' Reg' versus Parish of Langley and Goring. Pas. 6 Annæ.

A Motion was made to quash an Order of Removal, because it did not appear to be made upon the Complaint of the Overseers, and wanted an Adjudication, for it was only a bare Recital: Quashed.

Mich. 5 Annæ. Great Sancke, Barton and Clifton Parishes.

Orders of Sessions removed, on which Mr. Serjeant *Broderick* said, That where the Father hath no Settlement, there Birth doth give Settlement to Children: But where the Father hath a Settlement, and that is known, there Birth shall not give a Settlement to Children, but they shall go to the last Settlement of the Father.

Moved again, and there laid down by the Court as a General Rule, in Case of Orders, That if the Place who are to appeal do not do it in Time, it is *conclusive* to all Places, except where an After-Settlement can be fixed.

Int' Paroch' de Cripplegate & S. Michael' Cornhill. Mich. 9 Annæ.

Adjudged, That paying to a Scavenger's Rate, doth not gain a Settlement, it being a Ward, and not a Parochial Tax; and one Ward in *London* doth contain six or seven Parishes, *tamen quære.*

In' Northbovy & Shagford in Com' Devon.
Mich. 9 Annæ.

Order of two Justices to remove one Bab, his Wife and five Children from *Northbovy* to *Shagford*. Exception taken, not said to be made upon the Complaint of the Churchwardens and Overseers, but only said to be upon due Notice, and hearing the Differences, Allegations and Proofs produced on both Sides: But the Court held it was not sufficient, and said, It was very dangerous to give Liberty to use new Forms, and quashed the Order for that Exception.

Dunsford in Com' Surr' & Rudgwich
 in Suffex.

The Case was, A Person was hired, first from *Midsummer* to *Michaelmas*; and then from *Michaelmas* to *Lady-day* after, and from thence to *Michaelmas* following, and served all that Time: And whether this was such a Service, as by the Act of the 8 & 9 Will. 3. cap. 30. he shall thereby gain a Settlement was the Question: And it was said, It would be very hard it should not: And to support that was cited the Case of *Stephenson* and *Overton*, which was in *B. R. Hill.* 10. W. 3. No 7. where the Hiring was first from *Lady-day* to *Michaelmas*, and from thence to *Michaelmas* following, and Service for the first half Year, and above half the last Year, and adjudged a good Settlement

ment, for there was Hiring for a Year and Service for a Year: But the Court said, That was not a parallel Case, for in the present Case there was no Hiring for a whole Year; and a Case was cited by the Court, *Hill. 11 W. 3.* where the Hiring ten Days after *Michaelmas*, as from *Michaelmas* before till *Michaelmas* following, was adjudged no good Settlement; for it was said, That it must be one entire Hiring and one entire Service, in pursuance of such Hiring for a whole Year, that must make a Settlement, according to the abovementioned Act: And therefore the Order was quash'd.

Honiton & Colliton in Com' Devon versm
S. Mary Arches in Civit Exon. Hill.
 8 Annæ, N^o 12.

Honiton gave a Certificate with one *Abram Flood* and his three Children to the Parish of *St. Mary Arches*, where becoming chargeable, the Family is set back by Order of two Justices, and by vertue of the Certificate to *Honiton* Parish; and *Honiton*, by Order of two Justices, doth send the Man and his Family to *Colliton*, as the Place of their last legal Settlement. *Colliton* appeals to the Sessions, and there the last Order of the two Justices is set aside, alledging, That the Certificate is an Estoppel, and conclusive on *Honiton* Parish to remove them to any other Parish. These Orders are removed by *Certiorari*, and the whole Court were of Opinion, That the Certificate is conclusive

upon that Parish, that gives it against all other Parishes whatsoever; for otherwise it would open a wide Door for Contention, the Parish by their Certificate having owned them for their Inhabitants, and therefore must provide for them. Adjudged Michaelmas, 9 *Annæ*.

Pas. 10 Annæ. Int' Paroch. Bishop Waltham & Paroch' Forum in Com' Essex.

It was in this Case alledged to be a standing Rule in this Court, That if upon an Appeal, the Order of two Justices is either affirmed or quashed upon the merits of the Case, that it is conclusive between the two Parishes.

Int' Paroch. de Rickmansworth in Com' Hertford. & St. Giles's in Com' Middlesex.

An Order of two Justices, to remove a Child from the Parish of *Rickmansworth* to the Parish of *St. Giles's*, as being the place of his Birth, the place of his Father's last legal Settlement being unknown; for where the Father's place of last legal Settlement, of a Legitimate Child, is not known, there the Child may be sent to the place of its Birth, as well as of an illegitimate one.

Poor Children ought to be kept and provided for by the Parish where they were born, and not where the Parents die *in transitu*: Because the Place of Birth is a settling the Children in a Place certain, and

Vide Title Vagabonds.

Poors Settlements, &c.

Parents wandering with them afterwards will not alter the Case; nor dying there cannot be said to make a settling, to subject the Parish where the Parents die to provide for the Children: But they are to be sent to the Place of their Birth; but the Place of Birth or the Place of their last Habitation (if the same can be known) are in Judgment of Law the Place of settling. So resolved by Sir *William Jones* and Sir *James Whitlock* at *Stafford Assizes*, 28 *July* 5 *Car. 1. Bulstr. Rep. 2. p. 351, 352.*

The same Case resolved at *Worcester Assizes*, 11 *March*, 14 *Car. 1.* in the Case of the Vill of *Suckley* against the Vill of *Whitborn*. *Bulstr. 2. p. 357.*

If one big with Child be sent to the House of Correction, and there she is delivered of the Child, the Child is to be sent to the Parish from which the Mother was sent to the House of Correction, to be there kept and provided for, this being the Place where she was last settled. Resolved by Judge *Jones* at *Worcester Assizes*, 11 *March*. 14 *Car. 1. Bulstr. Rep. 2. p. 358.*

The House of Correction is for the Poor of a Parish who refuse to work, there they are to be whipped, and set on Work. So resolved by Judge *Jones*. *Bulstr. Rep. 2. p. 358.*

If the Justices of Peace in Sessions make an Order for a Parish to provide a House or to give any Person Means to live of who is not impotent, but able to work, hath an Estate: That Order is against Law.

and so resolved by Judge *Whitlock* at *Hereford* Affizes, 18 *March*, 7 *Car.* 1. in the Case of the Vill of *Kimmaiton* against the Vill of *Luyftas*, upon Statute 43 *Eliz.* ca. 2. *Bulstr. Rep.* 2. p. 347. *Keb. Rep.* pt. 2. p. 643. Pl. 75. The King against *Davis.* *Term. Pasch.* 2 *Car.* 2. *B. R. S. P.*

An Order of Sessions made at *Derby* for Parents to relieve their poor Children, was quashed, because the Justices at the Sessions did not make the Order, but had appointed other Justices to do it, who made the Order. Which Order was void; for the Justices at Sessions can't transfer their Authority over to others. *Term. Mich.* 24 *Car.* 1. *R. Style's Rep.* p. 154.

An Inhabitant in *B.* hired a Maid-servant for a Year: she fell sick, the Master turn'd her out of his Service: She in her passage from *B.* where she was a hired Servant, to *H.* where she was born, begged for Relief; she was sent as a Vagrant to *H.* where she was born. *H.* sent her back to *B.* and *B.* procured an Order of Sessions to settle her at *H.* This was removed by *Certiorari*; and the Court ordered her to be settled at *B.* where she was a hired Servant, and not at *H.* where she was born. *Term. Mich.* 49. *Style* p. 168. Parish of *Hardingham* against the Parish of *Brisley*.

A Motion was made to discharge an Order of Sessions made against a Feme Covert, to keep a Grand-child of hers, because a Feme Covert was not bound by such an Order. *Rolle*, Chief Justice, answered, That her

Poor's Settlements, &c.

Husband is bound to keep his Wife's Grandchild by the Statute : But discharged the Order, because the Husband was not charged by it. *Term. Trin. 1651. Style's Rep. p. 283. Sinke's Case.*

It was moved to set aside an Order of Sessions, for the settling a poor Person in a Town, which had been sent thither by Warrant of two Justices, which had been confirmed upon an Appeal to the Sessions. But the Court would hear nothing of the Merits of the Cause ; the Order of Sessions being in such Case final, unless there had been an Error in the Form. *Term. Pasch. 29 Car. 2. B. R. Ventris Rep. 1. p. 310.*

Anonymous Case. Trin. 5 Annæ.

A Motion was made to quash an Order, because it was only said lately settled, and not said to be where he was last legally settled : Quashed.

POORS TARES.

THE Statute of 43 *Eliz. ca. 2.* that enables Justices of Peace, where a Parish is unable to provide for their Poor, to tax the neighbouring Parish; the words being, Any other of any other Parish; it was resolved, That the Justices of Peace might impose the Charge upon any of the Inhabitants of the Neighbouring Parish, and were not obliged to put a general tax upon the whole Parish. *Term. Mich. 32 Car. 2. B. R. Ventris's Rep. 1. p. 350.*

Parsons are to be charged to the Poor; as Hale Chief Justice said, it had been agreed to by all the Judges of *England* in *Serjeant's Term. Trin. 25 Car. 2. B. R. Keb. Rep. 3. p. 255. Pl. 90.*

One *Fletcher* a Widow, having several Children by her former Husband, who liv'd in the Parish of *St. Buttolph* without *Algate*; which Parish lies in two Counties, viz. *London* and *Middlesex*, marries a second Husband, and then they put out the Children to Nurse at *Enfield* in *Middlesex*: And then the Mother dies, and after her the Father-in-law: The Nurse applies her self for Money to the Parish of *St. Buttolph*, which hath one Churchwarden, and several Overseers of the Poor of the County of *Middlesex* and City of *London*, and the Parish Rates are several. The Woman lived and died in that part of the Parish which lies in *Middle-*

sex; who contended with the other part of the Parish which lies in *London*; and upon Application to the Quarter-Sessions in *Middlesex*, the Justices of Peace there ordered, That that part of the Parish which was in *London* should go equal Charge in relieving these Children: And that part of the Parish which is in *London* not satisfied with the Order, applied themselves to the Gaol-Delivery at the *Old Baily*; and there it was resolved by *Pemberton*, Chief Justice, *Dolben* and other Judges there, That without any particular usage to the contrary, the Parish in both Counties ought to contribute their Shares towards the relief of the Children; because the Statute of 43 *Eliz. ca. 2.* names only Parishes: But in regard it was made appear, That each part of that Parish had distinct Officers, and made distinct Rates, and had used Time out of Mind to make distinct Accompts to the Justices of each County, the Court did look upon each Division as a several Parish, and thereupon ordered, That that part of the said Parish which lies in *Middlesex* shall pay the Nurse, and provide for the future for the said Children. And it was resolved That no Notice can be here taken of the place of the Birth of the Children, but of their last Settlement by 43 *Eliz. ca. 2.* because they are only poor Children and not Vagabonds: But they which are Rogues or Vagabonds within 34 *Eliz. ca. 4.* shall be provided for by the place where they

were

were born. *Term. Mich. 34 Car. 2. B. R. Raymond's Rep. p. 476, 477.*

An Order was made at the Sessions of the Peace in *London*, That *J. M.* should maintain his Daughter, and allow her 20 *d.* a Week to maintain her; and the same was quashed, because it did not appear by the Order, That she was unable to Work, or that she was Sick, Aged, or Impotent, and therefore not within the Statute 43 *Eliz. B. R. 13 W. 3. James Mendoza's Case.*

In a City, where one Parish is not of Ability to relieve their own Poor, the next Parish being of Ability are to be contributory to aid them herein, by a Weekly Allowance made for their Relief; and where the first Cause doth cease for the having of such Relief, as if their Poor do decrease and their Parish is grown to be of Ability, the Contribution there shall cease, or shall be lessened accordingly, as the Case shall require: As if their Poor decrease, or the Poor and they of the other Parish adjoining doth increase. Resolved by Judge *Jones* at *Worcester* Assizes, 29 *July*, 8 *Car. 1.* in the Case of the Parish of *St. Peters* in *Worcester* against the Parish of *St. Helens* there. *Bulstr. Rep. 2. p. 352.*

Resolved by all the Judges of *England* upon a Reference to them, That the Assessments for Relief of the Poor ought to be made according to their visible Estates, Real and Personal, which they have and enjoy in the Town, or Place where they inhabit, and not having any regard to any other Estate,

Poors Taxes.

Estate, which they have in any other Place or Town. And also to tax and assess the Occupiers of Land within the Town, or Parish only, and not the Lessors or Owners of the Lands. And accordingly it was so resolved by *Haughton* and *Croke* Judges of Assize, in the Case of the Town of *Boston* in *Lincolnshire*, at the Assizes at *Lincoln*, 11 May, 9 Car. 1. *Bulstr. Rep.* 2. p. 354.

The Case of *Needham, Barking* and *Dunstable* in *Suffolk*. The Case was referred by the several Parishes to the Lord Chief Justice *Holt*, who ordered it to be moved in Court. The Question was this, Whether a Farmer shall not be charged to the Poor's Rate for Stock, as well as a Shop-keeper shall for the Goods in his Shop? Sir *James Mountague* for the Farmers, alledging that the Act says, That the Inhabitants shall be taxed according to their Abilities: But that cannot be understood to be intended, that the Farmer shall pay for Plows, Harrows, Waggon, Carts and Horses, Oxen and Sheep; what is the Land without these necessary Goods, for the manuring and improving of it? And if he must pay for these, then in effect he pays twice for one and the same thing, for he pays a pound-rate according to his Rent; and if he must pay for the Things above-mentioned besides, then he pays twice one and the same, for the Poors Rate is over and above the value of the Farm, for which he pays a Rack-rent to the Landlord. Mr. Serjeant *Whitaker* on the other Side alledged, That the Tradesmen were never taxed in

J. L. 2. L. Keyser
1200. 2. Falk.
 452.

in this Place before, and why is not the Farmer to be taxed for his Stock as well as the Tradesman is for his? For the Act saith, Every Inhabitant is to be taxed according to his ability; but in the Act it is not said, that any Stock shall pay at all. It was objected on the other Side, That the yearly Assessment does lay a tax on all Stock; but then after saith, Except Stock upon Land in the Hands of the Farmers; which shews, That Stock was never to be charged, because the Land was paid for in the Land-tax; and if the Stock upon that Land should pay, it would be in effect to make the Land pay twice, for what is the Land but the Profits of the Land? And how can the Profits of a Farm be gathered in but by Stock? And I never heard that a Farmer ever paid a Rate for Stock upon the Land: But if a Farmer dies, the Party to whom it comes shall pay for it, because it is severed from the Land in another's Possession. Then as to the Usage, if you go into Towns you will not find that the Tax upon the Poors Rate is made according to the Houses, but according to the ability of the Inhabitants, neither have they any respect but to the Land according to the Rent; they never rate the Stock upon the Land, but the Land it self: Suppose a Gentleman takes a House at *Highbate*, he is only rateable there, according to the Substance of the Rent. Lord Chief Justice *Holt* asked, How they came to rate in respect of Stock, when the Act of 43 *Eliz.* mentioneth no such Thing?

And

Poor's Taxes.

And the Judgment of the Court was, That a Farmer shall not be taxed to the Poor for his necessary Stock, according to the Land that he holds ; but if he hath a superabundant Stock (*id est*) more than the Land he doth hold, maintains or doth require, there he shall be taxed for that superabundant Stock. But the Lord Chief Justice was of Opinion, That one was taxable as well as the other : The other three Judges were not of that Opinion.

Vide Title **Overseers**, ante.

Rape.

Rape.

THE Husband may prosecute for a Rape upon his Wife, tho' she be dead, and tho' she be divorc'd, *causâ frigiditatis.* Mich. 43 Ed. 3. f. 23. a. Pl. 15. Lib. Affiz. 44. f. 285. b. Pl. 12.

Rates, Vide Poor.

Re-

Recognizance.

THE King cannot take a Recognizance, for he cannot be a Judge, but ought to have Judges under him. None can take a Recognizance but a Judge of Record, or by Commission, as Judges of both Benches, Justices of Peace, and the like. Conservators of the Peace, by the Common Law, cannot take Surety of the Peace by Recognizance, but by Obligation. The same Law of a Constable. *Br. Abr. Tit. Recognizance. N^o 14 Br. New Cases f. 112. a. Pl. 511.*

Recusants. Vide Papists.

Restitution.

H. Steals Cattle and sells them at C. in an open Market ; and immediately *H.* is apprehended by the Sheriffs of C. and they seized the Money : And afterwards *H.* was arraigned and hanged at the Prosecution of the Owner of the Cattle. Agreed by the Court, That the Owner shall have Restitution of the Money. *Noy's Rep. p. 298. Harris's Case.*

Vide Kelynge's Reports, p. 35, 48, and 50. where Restitution of stolen Goods shall be awarded to the Prosecutor, notwithstanding a Sale in Market-Overt.

Re-

Regrators, Forestallers, and Ingrossers.

SALT is a Viſtual, and the buying and ſelling thereof is within the Statute 5 & 6 *Ed. 6. ca. 14.* For it is not only of Neceſſity of it ſelf for the Food and Health of Man, but it ſeaſoneth and maketh wholeſome Beef, Pork, &c. Butter, Cheeſe, &c. and other Viands. *Co. 3 Inſt. ca. 89. p. 195. Term. Mich. 7 Car. 1. Cro. Car. p. 231. Pl. 12.* The King againſt *Maynard.*

Apples are not within the Stat. of 5 & 6 *Ed. 6. ca. 14.* Reſolved upon a Writ of Error in the Exchequer-Chamber. *Term Mich. 6 Jac. 1. Co. Li. 13. p. 18. Pl. 6. Baron and Boy's Caſe. Cro. Jac. p. 114. Pl. 10. S. C. and S. P. by the Name of Braddon verſus Bower. Hill. Term. 1649.* Rolle was of Opinion, That Apples were not Viſtual within the Statute 5 & 6 *Ed. 6. ca. 14. Term. Paſch. 35 Eliz. Moor's Rep. p. 595. Pl. 810.*

Davis was indicted and convicted for ingroſſing and ſelling Salmons: And the Indictment was removed into *B. R.* and it was remanded: For tho' the Fiſhmongers may buy to carry on their Trade, yet they muſt not ſell at unreaſonable prices. *Term. Paſch. 12 Jac. 1. Rolle's Rep. p. 11.* The King againſt *Davis.* *Term. Trin. 9 Car. 1. Cro. Car. p. 314. Pl. 6. Fenn's Caſe.* The ſame Caſe is reported by *Jones 1. p. 320.*

Regrators, Forestallers, &c.

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An Information was preferred against one *Wray* for Forestalling: He confessed the Fact, and prayed the Court to mitigate the Fine. And upon this the Court took this difference, That if the Statute ascertains a Sum for the Delinquent to pay, and does not refer it to the Discretion of the Court, the Court cannot make any Mitigation; But otherwise where the Statute doth not prescribe a certain Sum, but saith it shall be the double value, or the like. And upon producing Precedents, and reading the Act of 5 & 6 Ed. 6. ca. 14. *Coke* seemed to incline, That the Penalty might be mitigated, because the Forfeiture is double the value. *Term. Pasch. 13 Jac. 1. Rolle's Rep. 1. p. 194. Pl. 34. The King against Wray.*

H. was indicted upon 5 & 6 Ed. 6. ca. 14. for Forestalling of Lead; and because it did not appear by the Indictment, that he bought it as it was carrying to Market to be sold, as it ought to do, the Indictment was quashed. *Term. Mich. 14 Jac. 1. Rolle's Rep. 1. p. 421. Pl. 9.*

An Information for ingrossing divers heaps of Corn: Not good; because it is not sufficiently ascertain'd what the quantity was: Had it been said of such a value, it had been good. *Term. Hill. 12 Jac. 1. Rolle's Rep. p. 134. Pl. 14. The King against Goulfborough.*

The same Point as to Hay and Straw upon an Indictment. *Term. Mich. 10 Car. 1. Gro. Car. p. 380. Pl. 7.*

In

Regrators, Forestallers, &c.

In an Information for ingrossing Butter and Cheese; the Information sets forth the quantity and value of the Butter and Cheese; and prays the double value, but does not say what the double value amounted to, and good; for 1*st*. It is sufficient to demand the value in general, without mentioning any Sum, and the value is to be enquired by the Jury. 2*dy*. The Informer demanded by his Information the Moiety for himself, and said nothing of the King's Moiety, and well enough, for the Informer is to have his Moiety first. *Term. Pasch. 3 Car. 1. Jones 1. p. 156. Pl. 1. Bedoe against Alpe.*

At the Sessions of the Peace held at Norwich 16 *Jac. 1.* There was an Information preferred against *A.* being a Grocer, for ingrossing 400 Quarters of Wheat, &c. The Defendant pleaded Not guilty. The Jury found the Statute 5 & 6 *Ed. 6. ca. 14.* as it relates to Ingrossing, and as to 380 Quarters, Not guilty; and as to 20, That the Defendant was a Starch-maker, and he made the Wheat into Starch. This was removed by *Certiorari* into *B. R.* and Judgment was given against the King and the Informer, for buying Wheat to convert it into Starch, is not within the Statute. *Bridgman's Rep. p. 5. Vide Brownlow's Rep. 2. p. 108. Mich. 9 Jac. 1. Cross versus Westwood,* not settled in this Case: But *Vide Bridgman's Rep. p. 48.*

It was said by *Hobart*, Chief Justice and *Winch* in *C. B.* That if a Man hath a Licence for Forestalling upon the 5 & 6

Ed. 6. ca. 14. he need but only recite that Statute in his Pleadings, without the pleading the *13 Eliz. ca. 25.* for the Licence is grounded only on *5 & 6 Ed. 6.* and the *13 Eliz.* only qualifies the Person. *Noy's Rep.*

p. 27.

An Information was brought upon *5 & 6 Ed. 6. ca. 14.* for buying of Seed-Corn, having sufficient of his own, and not bringing so much into the Market of his own Corn. It was delivered for Law, That a Contract in Market, for Corn not in the Market, or which was not there that Day, is not within the branch of the Statute: But if Corn or Grain be in the Market, altho' that the Contract be made in a House out of the Market, and delivered to the Vendee out of the Market, yet it is within the Statute. *Anderson* said, That the Market shall be said, the place in the Town where it hath been used to be kept, and not every place of the Town. *Term. Hill. 29 Eliz. Godb. Rep.*

p. 131. Pl. 149.

H. was indicted for Forefalling of Butter: To which Indictment, upon a Writ of Error, Exception was taken, That it doth not appear that the Indictment was at the Quarter-Sessions, but only at the general Sessions. *Rolle*, Chief Justice, said, It might be intended the Quarter-Sessions. *Term. Pasch. 1651. Style's Rep. p. 260.*

J. S. was indicted and 27 others of C. for that they ingross'd *magnam quantitatem straminis & fœni apud C.* with an intent to sell it, and make it the dearer. Two Ex-

P

ceptions

Regrators, Foreshallers, &c.

ceptions taken to the Indictment, 1. Because it is not alledged, That *quilibet eorum ingross*. but it was not allowed, for they may all Ingross together. 2. Because it is said, That they ingross'd a great quantity of Hay and Straw, but do not say, How many Loads of Hay and how many of Straw, which is uncertain; and for this the Indictment was quashed. *Term. Mich. 10 Car. 1. Cro. Car. p. 380. Pl. 7.*

Dom' Reg' versus Roberts & al'. Millers.
Pas. 6 Annæ.

Indictment for conspiring to raise the price of Corn; and moved to quash it, because it was without addition of place, but said Millers in general: quashed.

Riots

Riots, Routs, &c.

ONE Justice of Peace alone can neither make enquiry of a Riot, Rout or unlawful Assembly, when it is done, nor award any Process for it, nor otherwise meddle with it in the Nature of a Riot or Rout. But if one Justice of Peace do hear of any Riot, &c. he alone with his Servants may go the Place, and if he find any riotously gathered together, he may arrest them to find Sureties for the good Behaviour. *Term. Mich. 7 Ed. 4. f. 18. a. Pl. 12. Term. Mich. 14 H. 7. f. 7. b. Pl. 19. Kellow. Rep. f. 41. a. Pl. 6.* Mich. Term. 1649. Style's Rep. 66.

He may disarm them, and keep them till they be cool, and commit for want of Sureties: But if he do not immediately commit to Prison, and any Time pass, he cannot afterwards commit alone. If he comes to a place where he understands some Persons will repair to commit a Riot, &c. he may leave his Servants there to restrain them; and if they commit a Riot, &c. to arrest them to find Sureties. And if he hears of a Riot, &c. when he is sick, he may send his Servants to suppress it, or bring the Rioters before him, or some other Justice, to find Sureties, &c. He may also by Word only, without Warrant in Writing, command his own Servants, or any of them, to apprehend those who are about to commit a Riot, &c. in his Presence: And the

Riots, Routs, &c.

Servants may justify the apprehending of them, tho' they be fled out of his presence. *Term. Mich. 14 H. 7. f. 7. b. 8. a. b. 9. a. b. Pl. 19.*

If the Justices of Peace have no Notice of the Riot, &c. they do not incur the penalty of 100 l. unless it be some great, notorious, and very dangerous Rout, which by common Intendment, every Person in the Neighbourhood may take Conusance of. *Term. Hill. 4 Eliz. Dyer f. 210. b. Pl. 25.*

The Month within Statute 13 H. 4. ca. 7. is not to be confined to 28 Days, but to the Almanack Month, because it is not a Penal Statute, but only directory of the Punishment of an Offence at Common Law. *1 Siderf. p. 186. Term. Pasch. 16 Car. 2. B. R. The King against Cousins & al.*

A Riot is where 3 or more do an unlawful Act, as beat a Man, enter upon his Possession, or the like: An unlawful Assembly is, where People meet together to do an unlawful Act, but do not do it; and if after they are met, they shall move or go forwards, towards putting the same unlawful Thing in Execution, whether they do it or not, this is a Rout, and punishable. *Br. New Cases 112. a. Pl. 510.*

H. and two others were indicted for a Rescous, *sc.* That they riotously assembled themselves and made a Rescous. One was acquitted, and the other two found guilty of the Premises, which is to be intended of the Riot and Rescous: And because two cannot make a Riot, for there must be three
at

at least, the Indictment was ruled naught.
Term. Mich. 2 Car. 1. B. R. Benloe's Rep.
p. 194. Harrison's Case.

An Indictment was taken before two or three Justices of Peace out of Sessions, for a Riot, contrary to the Statute of 13 H. 4. ca. 7. And Exception taken to it, because the Enquiry concerning it was not within 28 Days after the Offence committed. But agreed by the Court, That this is not a Penal Law, but is only directory of the Punishment of an Offence, which is so by the Common Law. And as to the Month, they said, it should not be confin'd to 28 Days, but to the Almanack Month. *Term. Pasch. 16 Car. 1. B. R. Siderf. 1. p. 186. Pl. 9.*
 The King against *Cousins & al.*

J. S. and others were convicted in the County of *Durham*, upon the view of J. M. and W. B. Esqs. two Justices of the Peace, and N. C. Esq; the Sheriff of the same County, of a Riot *contra formam Statuti de 13 H. 4. ca. 7.* and they were fined by the Justices, *viz. J. 20 l. and S. and the rest 5 l.* a piece, but the Sheriff did not join in setting the Fine. A Writ of Error brought, and two Errors assigned. 1. It doth not appear, That the Defendants were convicted by the view of the Justices. 2. The Sheriff did not join in the fining them. And the Statute saith, That the Sheriff is to be joined in the whole Proceedings. And for these Errors, the Judgment was reversed. *Term. Trin. 32 Car. 2. B. R. Raymond's Rep. p. 386.*
 The King against *William Tempest* and others.

Robbery.

ONE *B.* and another came in the Night-time to a Tavern in *London* to drink, and after they had drunk, *B.* stole a Cup, in which they drank in a Chamber of the said House; the Owner of the House and Cup, his Wife and Servants being in the House. Agreed at the Sessions at the *Old Baily*, That this was not Burglary but Robbery, without benefit of Clergy, within Statute 5 & 6 *Ed. 6. ca. 9. Popb. Rep. p. 84. Bayne's Case, Kelynge's Rep. p. 68. & contra. Vide infra.*

A Man robb'd another of 49 s. upon the Highway; ruled to be no Robbery, unless it be found that the Person was put in fear. *Term. Trin. 5 Eliz. Dyer f. 224. b. Pl. 30.*

Chief Justice *Rolle* said in the Case of one *Wright*, That if a Man's Servant be robb'd of his Master's Goods in the Sight of his Master; this shall be taken for robbing of the Master. *Style's Rep. Term. Hill. 1651. p. 318, 319. S. P.* And if one cast away his Goods, to save them from a Robber, and the Robber take them up and carry them away; this is a Robbery done to his Person. *Term. Mich. 1649. Style's Rep. p. 156.*

P. kept an Ale house, and *E. P.* was his Servant, who saw her Mistress put Money in a Trunk, two pair of Stairs, and lock'd her Trunk. *E. P.* combin'd with two Men to rob her of the Money: And in order there-

thereunto, those two Men came into the House to drink, and found fault with all the Rooms below Stairs, and so were had up two pair of Stairs, the next Chamber to that where the Money was; and E. P. came to them, and they broke up the Trunk, and took away 60*l.* in Money. Chief Justice *Kelynge*, Judge *Twisden* and *Wylde* were of Opinion, that this is but Felony, and does not make an actual breaking of the House: But in that Case, if they being in the House break open any Chamber Door and steal Goods; this is an actual breaking of the House: Or if they break open any thing which is fix'd to the Freehold, as a Cup-board, Door in a Wall, &c. At the Sessions at the *Old Baily*, 11 *July*. 8 *Car* 2. *Kelynge's Rep.* p. 58. *Thomas Johnson*, *John Girelans* and *Elizabeth Powel's Case*.

Of necessity there must be somewhat to distinguish a Robbery in a House, from that which is but meer Larceny: And this is one, *viz.* the Larceny, is only fraudulent, without any actual Force, and a Robbery is done with Force: And this will appear by examining the Nature of Burglary, which is the robbing a House by Night, there must be Force committed, as the actual breaking a House makes it Burglary: For if the Door of a House be open, and a Thief enter in the Night and steal Goods; This is only Larceny and no Burglary, because there was no Force, which is that which distinguisheth Robbery from Felony.

Robbery.

Now the Force which will make a Robbery of a House, may either be an actual breaking of the House, or an Assault upon the Person. *Kelynge's Rep. p. 68, 69.*

Rogues. Vide **Clagabonds**, &c.

Scold.

Scolding.

Dom' Reg' versus Houston & al'. Trin.
6 Annæ.

Indictment against two for Scolding, and moved to quash the same, because the Scolding of the one cannot be Scolding of the other, and then the Crime cannot be joint. But the Court would not quash it, but put the Defendants to demur, and said, That to make this a Crime indictable, there must be several repeated Instances before they can be indicted for common Scolds,

Settlements. Vide Poor.

Silk

Silk-Throwers.

UPon a *Certiorari* directed to the Lord Mayor of *London*, for all Orders by him made against one *B.* he return'd, That by vertue of the Statute of 13 & 14 *Car. 2. ca. 15.* for the regulating the Trade of Silk-Throwing, he had convicted *B.* for buying of Silk of the Winder, upon the Oath of the Seller, and had adjudged *B.* to pay the value to the Owner, and his Charges. Exception was taken, That the Seller was *particeps criminis*, and so no competent Witness. 2. That Judgment ought to be given against the Seller, for the Act makes him an Offender also. But these were both disallowed, and the Return ruled to be good. *Term. Pasch. 33 Car. 2. Jone's Rep. 2. p. 155.* The King against *Benison.*

Sutety

Surety for the Peace.

THE Surety of the Peace is discharged by the King's Death; so doth the Death of the Recognizor and Recognizee, if it be not forfeited before *Term. Mich. 1 H. 7. f. 1. a. Pl. 1. 1 Mar. Br. New Cases, f. 98. a. Pl. 448.*

If one be bound to the Peace, and afterward do threaten *J. S.* to his Face, and in his Presence, to kill or beat him; this is a breach of the Peace, and a forfeiture of his Recognizance: Otherwise if he threaten in his absence, unless he lies in wait, and then it is. *Term. Hill. 18 Ed. 4. f. 28. a. Pl. 24. Term. Mich. 22 Ed. 4. f. 35. b. Pl. 16. Pulton de Pace f. 22. Pl. 83.*

Note, The Surety for the Good Behaviour may be forfeited by the extraordinary number of People which the Recognizor hath attending upon him, or wearing more or other Weapons than he before usually did, or are meet for his Degree or Estate, or by using vigorous or terrible Words or Threatenings, tending or inciting to the breach of the Peace, or demeaning himself in his Behaviour, Company or Gesture, or doing of any thing which shall tend to the breach of the Peace, or to put the People in dread or fear. *Term. Mich. 2 H. 7. f. 2. b. Pl. 7. Vide Good Behaviour ante.*

But to a forfeiture of a Recognizance of the Peace, there must be an actual breach of the Peace by an Affray, Battery,

Surety for the Peace.

tery, or the like. *Vide 2 H. 7. and Roll Rep. 2. p. 199. Stamp and Hyde. Term. Mich. 18 Jac. 1. Term. Hill. 18 Ed. 4. f. 28. a. Pl. 24. by Croke and Bryan. Term Mich. 22 Ed. 4. f. 35. b. Pl. 16.*

A Man bound to his Good Behaviour is arrested on suspicion of Felony, and escapes; that is a Misbehaviour, tho' it does not appear that any Felony was committed. *Term Pasch. 26 Eliz. Godb. Rep. p. 22. Pl. 31.*

If a Man finds Surety of the Peace before Justices of Peace in the County, at the Suggestion of *A.* and after this *A.* comes into the *B. R.* and makes Oath, That he is in doubt of being ill treated by him, and prays Surety of the Peace against him, he is to have it; and upon that a *Superfedeas* to the Justices of Peace to discharge the Bond which is before them. Held by all the Judges *B. R. Term. Trin. 4 Eliz. Moor's Rep. p. 43. Pl. 131.*

Procuring another to break the Peace, is a Forfeiture of the Recognizance for the Peace. *Br. Title Peace. N^o 20. Br. New Cases, f. 77. a. Pl. 351.*

Words which amount to a breach of the Good Behaviour, ought to be such as tend to the breach of the Peace; or otherwise it is not a breach of the Good Behaviour. By the Opinion of *Mountague*, Chief Justice, and *Haughton* and *Chamberlain* Justices. *Term. Mich. 18 Jac. 1. Rolle's Rep. 2. p. 199. Stamp and Hyde's Case.*

*Palm. Rep.
p. 126. S. C.*

H. and J. were upon the Complaint of *S.* bound to the Good Behaviour: And one of them

Surety for the Peace.

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them said to S. Thou art a quarrellsome
Fellow, and a scurvy Knave. Agreed, That
this was no breach of the Good Behaviour.

Term. Mich. 20 Jac. 1. Rolle's Rep. 2. p. 271.

Stamp versus Jenkins and Hyde.

If an Offender be brought before a Justice
of Peace, the Party ought to tender Sureties;
and it doth not behove the Justice to demand
it. *Noy's Rep. p. 70. Colme against Frome.*

Taxes. Vide Poor.

Trial.

Trial.

THE Lord Sanchar at *Westminster* in *Middlesex* procures R. C. to kill J. T. R. C. with J. J. kill J. T. in *London*. R. C. and J. J. were tried as Principals in Term time in *London*, and convicted; and the Lord Sanchar, as Accessary, was tried in B. R. in *Westminster*, upon 2 & 3 Ed. 6 ca. 24. Term. Trin. 10 Jac. 1. Co. Lib. 9 f, 117. a. Lord Sanchar's Case.

If a Man be feloniously stricken or poisoned in one County, and dies in another County, the Indictment and Trial must be in the County where the Death doth happen. Co. 3 Inst. p. 48, 49. But if the Act which makes up a Felony be committed in two Counties, this is not holpen by any Statute yet made. Co. Inst. 3d. pt. p. 73.

A Man steals Goods in one County and flies with them into another County, he may be indicted in either of the Counties. 34 H. 8 Br. New Cases. f. 54. a. Pl. 236.

Error was brought of a Judgment, given at the Sessions of the Peace at *Worcester*, upon an Indictment of Common Barreny where the Party was indicted for a Common Barretor; and at the same Sessions arraigned thereupon, and traversed it: And a *Veneremur facias* was awarded immediately to try it: And he was convicted and instantly fined 40 l. and committed *quousque*, &c. A *Certiorari* was brought, and the Proceedings removed

removed, and a *Habeas Corpus*, and the Party brought up, who would have discharged himself by Exceptions to the Indictment; but resolved that he could not, because Judgment being given, he must bring his Writ of Error; which he did: And assigned for Error, That he ought not to have been tried the same Sessions, but the next: But not allowed, for the Party being present, may be tried as well the same Day, as at another Time. And presently after Confession, the Justices of Peace may impose a Fine, and commit to Prison till the Fine be paid. *Term. Trin. 14 Jac. 1. Cro. Jac. 404. Pl. 2. Rice versus Regem.* With this Judgment agrees *Co. 4 Inst. p. 164. Co. 2 Inst. 568. Term. Hill. 14 & 15 Car. 2. B. R. Siderf. Rep. 1. p. 99. Pl. 2. The King against Sadler.* It was the Opinion of the Court, That Justices of Peace cannot hear and determine the same Day, unless by Consent of Parties. *Term. Pasch. 19 Car. 2. B. R. Siderf. 1. p. 334.*

The King against *Brown*, where *Brown* was indicted of Barretry before the Justices of Peace, and tried the same Day, and Judgment against him: Upon a Writ of Error the Judgment was reversed. And the Court, after considering it, declared, That Justices of Oyer and Terminer, as well as of Gaol-Delivery, might try the same Day without Consent of Parties; but Justices of Peace cannot hear and determine the same Day, unless it be in Capital Cases, where the Offender is in custody: And they reversed the Judgment.

H

If one break a House in the Night, steal Goods of several Men, and be indicted for that Burglary, and stealing Goods of one of the Men, and be acquitted, he cannot be afterwards tried for the Burglary, but may for the Felony, for stealing the Goods of other Men. By the Opinion of Chief Justice *Hyde* and *Bridgman*, Judge *Kelynge* and *Wylde*, 20 Apr. 16 Car. 2. At Newgate Sessions. *Kelynge's Rep.* p. 30. *William Turner's Case*, p. 52. S.P. in *Jones and Bever's Case*.

Vagabonds, Rogues, Wanderers.

THE Mother wanders with a young Child, under the Age of seven Years, and the Mother dies. Resolved, That the Child is to be pass'd to the place of its Birth, but not as a Vagabond, Rogue or Wanderer; by Sir *William Jones*, and Sir *James Whitlock*, Judges of Assize at *Stafford*, 28 July, 5 Car. 1. *Bulstr. Rep.* 2. p. 251, 252. Resolved also at the same time, That an Infant under the Age of seven Years shall not be said to be a Wanderer. *Ibid.*

A Rogue is not to be sent to the House of Correction, but he is to be whip'd, and so to be sent to the Place where he was last settled, if the same may be known; if not, to the Place of his Birth. So resolved by Judge *Jones* at *Worcester* Assizes, 11 March. 14 Car. 1. *Bulstr.* 2. p. 358.

A hired Servant falls Sick, and the Master turns her out of Doors, and she begs in passing from the Place where where she was in Service to the Place of her Birth. This is not begging to make her a Vagrant. *Term. Mich. 1649. Style's Rep.* p. 168. Parish of *Hardingham* against the Parish of *Brisley*.

J. H. was indicted, for that he being an Inhabitant in *B. in Com' M.* at *H.* and other Places in the same County, was a wandering Pedlar, carrying about Wares to sell in private Houses, and not in open Markets and
Q Fairs,

Vagabonds, Rogues, &c.

Fairs, and sold such Wares, shewing what in particular, and so was a Vagabond. And the Court adjudged him to be a Vagabond; for he is a Pedlar and Wanderer within the Words and Intent of the Statutes. *Term. Trin. 18 Jac. 1. Cro. Jac. p. 577. Pl. 5. Tho. Hollingworth's Case.* The same Case is reported, *Rolle's Rep. 2. p. 172. Pl.* where it is said, That he was adjudged to be a Vagabond within 39 *Elix. ca. 4.*

Dom' Reg' versus Inhabitants of Shellingford in Com. Berks. Trin. 4 Annæ, Rot. 25.

The Case was, Two vagrant Women travelling together, and coming to *Shellingford* in *Berkshire*; one of them is delivered there of a Child, and afterwards went to *Cookswell* in *Gloucestershire*, and left the Child there and runs away: Whereupon two neighbouring Justices, upon Complaint made, and on examining of the other Woman, make an Order to remove the Child to *Shellingford*; they adjudging upon the Evidence of the other Woman, to be the Place of its Birth; whereas it should have been to the Place of the Mother's last legal Settlement, the Father being unknown. Whereas it was objected to this Order, it was not set forth or adjudged to be a Bastard-Child, *sed non allocatur.* 2d Objection, No Adjudication of its being likely to become chargeable. But to this the Court said, It is a necessary Consequence because it was said to be but two Years old as to the Statute 12 *Car. 2.* being born in

a Parish doth not make a Settlement, if born in lawful Matrimony, for there it must follow the Settlement of the Father: And in this Case being not said to be a Bastard-Child, and being upon Complaint, it therefore ought to follow the Parents. But the Court held, This was a Settlement by Birth, till the Parents Place of Settlement could be discovered: Therefore the Order was confirmed, notwithstanding it did not say, it was a Bastard-Child. Adjudged *Pasch.*
Anna Reg.

Wages.

THE greatest part of the Justices resident within the County ought to be present at the rating Servants Wages; and if they be not, all that is done is void.

The Justices are also to call to them some grave Men of the County, and without them they cannot rate Servants Wages: For the Statute ordains, 1. That they shall call such to them. 2. That they shall confer together, and consider of the Plenty and Scarcity, and other Circumstances necessary to be considered. Resolved by the Court, *Trin. Term. 16 Jac. I. Bridgman's Rep. p. 118, 119. Margaret Evans against Wilkins.*

It was agreed by the Judges, That the Justices of Peace ought to certify into the Chancery the Servants Wages 6 Months after *Easter*, according to 5 *Eliz. ca. 4.* upon the Penalty of 10 *l.* upon every Justice of Peace who shall be absent. *Term. Mich. 9 & 10 Eliz. Dyer f. 265. a. Pl. 3.*

A *Certiorari* was awarded to the Justices of Peace of *Middlesex*, to remove an Order made by them; which was, That Mr. *Deval* should pay to his Coachman the Wages agreed between them. Against which it was moved, That the Statute of 5 *Eliz. ca. 4.* doth not extend to Coachmen, or any other Servants than what belong to Husbandry; which was owned by the Court.

Court, and the Order quashed. *Term. Pasch.*
28 Car. 2. B. R. *Jones's Rep.* 2. Mr. De-
val's Case. *Kebl. Rep. pt. 3. p. 626. Pl. 10.*
S.C. p. 640. He saith the Order was con-
firmed *nisi*, and 642. *Pl. 51.* he saith it was
quash'd.

*Trim. 5 Annæ. Dom' Reg' versus London
the Gardener.*

An Order of the Sessions of the Peace at
London for the Defendant to pay to his two
Labourers their Wages, founded upon the
Statute 5 *Eliz.* And removed and quashed
by all the Court, because it appeared by the
Order it self, not to be in Husbandry, for
Gardening is not Husbandry within the Sta-
tute, being making of ornamental Walks,
and not for Profit.

*Pas. 5 Annæ. Dom' Reg' versus Paine, Clerk
of the Peace of Westmorland.*

Moved to quash an Order made by two
Justices for Wages, without alledging them
to be Servants in Husbandry; for it did not
appear the Justices had any Jurisdiction.
Quashed.

Ways. Vide *Highways.*

Warrant.

A Warrant from a Justice of Peace to answer to such Things as shall be objected against the Party, without alledging any Cause, was said by Chief Justice Coke to be good, in the Cause, *Wilson versus Dodd*. *Rolle's Rep.* 1. p. 135. Pl. 15. Term. Hill. 12 Jac. 1.

But he cannot commit to Prison for certain Causes, but must alledge the Cause. *Boucher's Case*, Term. Mich. 3 Jac. 1. Cro. Jac. p. 81. Pl. 4.

Justices of Peace are to elect Constables of Hundreds, and High Constables, and these are removeable by them, if there be Cause for it: But if it be in a Manor, and the Constable is chosen and sworn in the Court-Leet, the Justices of Peace have no Power nor Authority to displace him; nor can they elect a Petty Constable. And accordingly it was ruled in the Case of the Constable of Stepney. Term. Trin. 9 Jac. 1. *Bulstr. Rep.* 1. p. 174.

Vide Tit. Arrests, and Constable.

Watch.

Watch.

IN False Imprisonment brought, the Defendant justified, because at the Time he was Constable of D. and appointed the Plaintiff to watch, and he refused; for which he set him in the Stocks. Upon a Demurrer, it was said by *Wray*, Ch. Justice, That the Defendant ought to shew, that the Plaintiff was an Inhabitant in the Town, and that it was his Turn to watch: And if such Inhabitant refuse to Watch in his Turn, the Constable may set him in the Stocks. *Term. Trin. 30 Eliz. B. R. Leon. Rep. pt. 3. p. 268. Pl. 271. Stretton and Brown's Case, Cro. Eliz. p. 204. S. C.* And saith, It was adjudged for the Plaintiff, because the Defendant did not shew, that the Plaintiff was an Inhabitant there: and the Constable cannot appoint a Stranger to watch, neither by the Statute of *Wimborne*, 13 Ed. 1. c. 4. *H. 4. c. 3.*

Term. Mich. 16 Car. 2. B. R. It was ordered by the Court, That as well in the Winter as in the Summer, Watch and Ward should be kept in the Night in every Street throughout *Westminster* and the Suburbs of *London*; and they directed their Order to the Justices of Peace and the Sheriff, and charged the Sheriff with it in Court. And the Ch. Justice said, That a Rate should be made, that every one who inhabits there should contribute so much to such Charge. *Siderf. Rep. 1. p. 218.*

Witchcraft.

A. C. was indicted at *Southwold* in *Suffolk* for Felony and Witchcraft before the Justices of Peace. And being brought up by *Habeas Corpus*, and Counsel assigned her, several Exceptions were taken to the Indictment, 1. To the Caption, wherein it was express'd, That the Indictment was taken *in pena Sessione*, where it should be *in plena Sessione*. Rolle answered, if the Word *pena* were left out, the Indictment is good without it. 2. That the Indictment doth not say, That the Justices, before whom it was taken, were *Iusticiarii ad pacem tenendam in villa præd.* and then they might have no Power to find the Indictment: But this was overruled. 3. That the Indictment was too general, for it only says, That the Prisoner *præstavit diabolicas Artes*, and doth not express what. Rolle, Justice, answered, That the employing of wicked Spirits, to any Intent whatsoever, is Felony within the Statute; and the Intent why they were employed is well express'd in the Indictment; and if an Indictment fail in one part, it may be good in another; and therefore the Indictment was good. *Term. Trin. 24 Car. 1. B. R. Style's Rep. p. 116. The King versus Camell.*

Dr. L. was indicted for Sorcery and Witchcraft, viz. *quod exercuit quasdam malas & execrabiles & diabolicas Artes, Anglice,* Witch-

Witchcraft. This was quashed, because there was no Word in the Indictment, which signifies Wichcraft. It was said, *Incantatio* is the proper Word for Witchcraft. *Latch.* Rep. p. 156. Dr. Lamb's Case. Noy's Rep. p. 85. S. C. Hill. Term. 1 Car. 1. B. R. Benloe's Reports, the same Case, as in *Mich.* Term. 2 Car. 1. And says the Court came to no Resolution.

Here.

*Here follow certain other Cases respecting the
Justices Authority, which coming to Hand
since the Printing of the foregoing Sheets, are
for the Readers Benefit hereunto added.*

*Wood's Case in Michaelmas Term, 30 Wil. 3.
in the Court of King's Bench.*

Bastard born
in T. by an il-
legal Order of
removal of the
Matter from
L. to T. is set-
tled in L.

A Woman being big with Child, was removed by the Order of two Justices of the Peace from L. to T. and was soon after brought to Bed there. T. thereupon appealed, and on the Appeal, the Woman was sent back to L. and it was the Opinion of the whole Court, That the Child ought to be sent there; and that all was suspended by the Appeal, for now the Mother's Right of settling upon T. is entirely avoided from the beginning.

*The King against Barebaker in the Court of
King's Bench.*

An Order to
pay Money
till the Child
be 14 Years
old, naught.

By an Order of two Justices of the Peace, That the Defendant *Barebaker* should pay a certain Sum of Money weekly, till the Bastard-Child should attain the Age of fourteen Years; it was held by the Court, That the Order was naught, because that the Justices have no Power but to save and indemnify the Parish, and that is only to oblige the Defendant *Barebaker* to maintain the Child, as long as it is or may be chargeable to the Parish.

Between

Between the Inhabitants of the Parish of Westbury and Costham, in the Court of King's Bench in Trinity Term, in the third Year of Queen Anne.

A Woman big with Child, was by an Anillegal Order of two Justices removed from the Parish of *Westbury* in *Wiltshire*, to the Parish of *Costham*; and there she was brought to Bed: Upon this, *Costham* appealed at the next Sessions, and the Order reversed: Afterwards *Westbury* obtained an Order from two Justices, and sent back the Child to *Costham*; they appealed, and upon the Appeal the Order was confirmed. At last it was removed into the King's Bench; and by *Holt*, Chief Justice, it was said, That the Birth at *Costham* did not settle the Child there, because it was under an illegal Order procured by *Westbury*: Which said Order being reversed, the Matter is no more, than that they procured the Woman to go thither.

The Queen against Murray, Michaelmas Term, the third of Queen Anne, in the King's Bench.

If a Husband be beyond Sea during the whole Time of his Wife's going with Child; the Child is a Bastard, not otherwise.

Upon a Special Order of the Sessions, the Question was, That if the Husband be *ultra mare*, and during that Time the Wife be got with Child, whether the Child be a Bastard within the Statute of 18 *Elix.* cap. 3. It was by *Holt*, Chief Justice, said, That

Cases omitted in Bastardy.

That if the Husband was out of the four Seas during the whole time of the Wife's going with Child, in that Case the Child is a Bastard; but if the Husband were here at all within that Time, it is Legitimate and no Bastard: Besides it did not appear by the Order, that the Husband was absent all the Time: The Order was for these Reasons quash'd.

The Queen against Weston, Trinity Term, the fourth of Queen Anne, in Banco Reg.

Money ordered to be paid to Overseers good.

The Defendant *Weston* being adjudged the Father of a Bastard Child by two Justices of the Peace, several Exceptions were taken to the said Order; first, that by the Order he was to pay so much weekly to the Overseers of the poor of the Parish, but that was over-ruled; for as before the Institution of the Overseers, the Justices might, and often did in these Cases, order the Money to be paid to some of the Inhabitants; so now they may to the Overseers, who have the Care of the Poor. The second Exception was, that it is said in the Order, We two of Her Majesty's Justices of Peace *doth* adjudge, &c. which is the singular number instead of *do* the plural; and 1 *Cro. Reports* 489. was cited to make this Exception good; whereupon this Order was quashed.

Order quashed, for putting the singular instead of the plural Number.

Note, This Cause came into the King's Bench by *Habeas Corpus*, and the Case was, That *Weston* the Defendant had appealed to the Sessions where the Order was confirmed,

ed, and he was committed for not paying the Money ordered, and Mr. King (now Sir Peter King) took this Exception to the Return of the *Habeas Corpus*, viz. that the Sessions should have proceeded against him upon his Recognizance. And it was said by Holt, Lord Chief Justice, That if they proceed on the Statute of 18 Eliz. the Sessions has no Power to commit, but to proceed on his Recognizance; but if on the 3 Car. 1. the Sessions may commit, as the two Justices might have done, unless the Party had put in Security to have performed the Order, or to appear at the next Sessions.

By 18 Eliz. must proceed on Recognizance; and by 3 Car. 1. may commit.

Between the Parishes of St. George and St. Margaret's Westminster, in Michaelmas Term, the 5th of Q. Anne, in Banco Regis.

Upon a Special Order of Sessions, where in the Fact was stated, for the Opinion of this Court, the Case was thus, That one A. was divorc'd *à mensa & thoro*, and afterwards his Wife lived with one Ellis in Adultery in the Parish of St. Giles, and had several Children by her, and they all went by the Name of Ellis, and register'd in the Parish Book as his. It was held by the Court, That when a Woman is separated from her Husband by such a Divorce, the Children that she shall have during that separation are Bastards, for we will intend a due Obedience to the Sentence, unless the contrary plainly appears: But if Baron and

Child begotten after Divorce, *à mensa & thoro*, a Bastard; otherwise, if a voluntary separation.

Cases omitted in Bastardy.

and Feme without Sentence, shall part and live separate; the Children in that Case shall be taken to be Legitimate, and so deemed till the contrary be proved, for Access shall be intended; But if a Special Verdict find the Man had no access, it is a Bastard, and so was the Opinion of the Court.

Between the Parish of Budworth and Township of Damply in Lancashire, in Hillary Term, in 5 Q. Anna, in the King's Bench.

Upon an Order made about thirty Years ago on the Parish of *Budworth*, for the maintenance of a Bastard-Child, born in the Township of *Nether Damply*, within the said Parish; which Order was now removed before this Court by *Certiorari*. It was held,

Order for maintenance, does not determine the Settlement of a Bastard.

13 & 14 Car. 2. relates only to the maintenance of the Poor, not to Bastardy.

1. That an Order made upon the Overseers of any Parish by two Justices for raising a Sum towards the maintenance of a Bastard, or poor Person, does not determine the Settlement of that Person in that Parish, for the Right of Settlement is not contested but presumed.

2. That the Clause in the Statute of 13 & 14 Car. 2. cap. 12. which provides that distinct Townships of large Parishes in the Northern Counties, shall respectively provide for their Poor, under the Penalty mentioned in the Stat. 43 Eliz. cap. 1. must be understood with respect to the maintenance of poor and impotent Persons, and not

Cases omitted in *Bastardy*.

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not with respect to Bastards, who are provided for by other Statutes; but if a Bastard be grown up, and by accident grow lame or impotent, he shall be relieved as a poor Person within that Statute.

Michaelmas Sessions 11 Annæ Reginae 1712.

The following Case was then made and stated.

Margery Jeffreys Widow, being an Inhabitant in the Parish of *Cobham*, and having *Elizabeth* and *Margery* her two Daughters, by *Robert Jeffreys* her former Husband, under the Age of seven Years, the Churchwardens and Overseers of *Cobham*, according to the Statute, gave a Certificate to the Parish of *Chatham* for the Widow and Children, where they went to reside. Afterwards one *Philip Jennings*, a Parishioner of the Parish of *St. Paul's Shadwell*, intermarried with the said *Margery* the Widow, and with her lived at *Chatham*, but gained no legal Settlement there. And the Churchwardens and Overseers of the Parish of *Shadwell* thereupon gave a Certificate to the Parish of *Chatham*, according to Law, owning the said *Philip Jennings* and *Margery* his Wife their Parishioners; the said *Elizabeth* and *Margery Jeffreys* being not named in such Certificate. *Margery* the Wife died, after whose Death the said *Elizabeth* and *Margery* her Children are sent by order of two Justices to the Parish of *Shadwell*.

Quære,

Cases omitted in *Bastardy*.

Quere, Whether the Childrens Settlement is in the Parish of *Shadwell*, or at *Cobham*.

The Case thus stated was by Order of Sessions referred to the Judges of Assize, who were Lord Chief Justice *Parker* and Mr. Justice *Tracy*, who after some Deliberation, gave their Opinions as follows.

‘ All Parties having attended us, pursuant
‘ to an Order of the Sessions for the County of *Kent*, touching the Settlement of
‘ *Margery Jeffreys* and *Elizabeth Jeffreys*,
‘ two of the Children of *Robert Jeffreys* and
‘ *Margery Jeffreys* his Wife; and having
‘ heard the Allegations on all Sides, We
‘ are of Opinion, That the said *Margery Jeffreys* and *Elizabeth Jeffreys* ought to be
‘ settled at the Parish of *Cobham* in the
‘ County of *Kent*. Dated the 14th Day
‘ of *August*, 1713.

T. Parker.

R. Tracy.

The Judges at first divided in their Opinions, but afterwards agreed; and the chief Reason that they went upon was, because it did not appear (nor was it so) that ever *Margery* and *Elizabeth Jeffreys* ever lived or resided with their Mother after the second Marriage.

*The Queen against Odam, Michaelmas Term,
in the 13th Year of the Queen, in the Court
of King's Bench.*

An Order by two Justices for the main-tenance of a Bastard-Child, was excepted order Pay-
to by Mr. Page (now Sir Francis), because ment of a
the Defendant Odam was upon sight of the gross Sum.
said Order to pay nine pounds in one en-
tire Sum, and afterwards so much per
Week, as therein mentioned. It was held
by the Court, that by the Statute the Justi-
ces are to take order for relief of the Parish,
and keeping of the said Child, by pay-
ment of Money, either Weekly or other-
wise; and this Sum may be only for indem-
nifying the Parish for Money laid out be-
fore the reputed Father could be found.

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T H E T A B L E.

A.

Accessory and Principal.

O NE may be Principal, tho' not present at the Fact, Page 1, 2, 3	
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So where divers intend it, but one alone does it,	2
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Arrest.

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And herein a Man's House is no Refuge, &c. as in Debt, &c. it is, because this is a Criminal matter, ibid.

But the Justices of the County, where taken, can only commit him, ibid.

Nor can a Justice in his Absence command another to arrest without a Warrant in writing, 21

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Felony by Statute Law.

B*y 21 H. 8. c. 7. 'tis Felony in a Servant, who having Money by delivery of the Master or a Fellow-Servant, goes away with it (i e. if above 40 s.)* 92

Contra, if he receives Money upon an Obligation, or upon sale of Wares, and goes away, ib.

By 1 H. 7, c. 7. killing and taking Deer out of any of the King's Parks, is Felony, ibid.

But four Things are requisite to make it Felony, Vide 92

And tho' hunting in a Park be made Felony, yet it may be but Trespass if the Party please, 93

By 39 El. c. 15. of breaking Houses by Day, Chambers in the Inns of Court and Chancery are Dwelling Houses within that Act, ibid.

By 7 H. 7. c. 1. and 3 H 8. c. 5. A Soldier, that receives Press Money, &c. and runs away without Licence, is a Felon, ibid.

By

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By 3 H. 7. c. 2. of *stealing Women*, 'tis not Felony, unless *Marriage* or *Copulation* follow,

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But if the taking be by Force, 'tis Felony, tho' the *Marriage* or *Copulation* be by Consent, ib.

And the *Woman* must have *Lands* and *Goods* in Possession, or be an *Heir* apparent, ibid.

By 1 Jac. 1. c. 8. of *Stabbing*. B. first struck W. who struck him again; and after some *Blows* interchanged, B. stabs W. this is Felony, &c. vide 95

See the Statute 10 & 11 W. 3. c. 23. of *Persons stealing in any Shop, Ware-house, Stable, &c.* to the Value of 5 s.

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Forcible Entry.

What is a *Forcible Entry* or *Forcible Detainer*, or not, vide 98, 99, 104

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So he may arrest for a *Forcible Detainer*, vide pa. 21

He ought on Notice of such Entry or Detainer to go thither and make *Inquisition*, and if found, remove it, 97, 98

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And if he find the *Doors* shut, or great Numbers assembled, &c. it is a *Detainer* or *Entry with Force*, ibid.

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- See that Statute explained, and not to be ex-
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- But if he be ousted by Force, and afterwards re-
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- For if one has been twenty Years in Possession,
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- Yet if one comes to Lands, &c. by unlawful
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- If the Party ousted by Force dies before Resti-
tution, the Justices can't restore Possession;
but

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Time tioned 99 up- ffen- 106 the Ju- 97 ices heir 101 ding bid. ex- fully 105 &c. Issue 101 ssion Fu- 02 re- by 96 ion, and bid. ful ore, by 97 iti- ion; but	<p>but he that did the Force may be indicted and fined, &c. Page 97</p> <p>Tho' one enters by Right and Title, yet if found done by force, the Justices may restore Pos- session, 98</p> <p>If one distrains for Rent by force, or a Com- moner be expelled his Common by force, or Cattle kept in another's Ground by force, a Justice may remove it, but not award Resti- tution, ibid.</p> <p>But if one Joint tenant or Tenant in Common puts out another by force, a Justice may in- quire of this, and restore, &c. ibid.</p> <p>A Forcible Entry, &c. may be into a Church ; so of a Meadow, 105</p> <p>So into the Moiety of a Manor, 102</p> <p>So one may be ousted of a Rent or Common by force, &c. 104</p> <p>A Disseisin found, implies an Expulsion by force, yet a Detainer may be without it, 104. Vide 98, 99</p> <p>A Copyholder may have an Indictment on the Statute 8 H. 6. c. 9. But the Word Dissei- sed must not be in it, 100</p> <p>And one Justice may remove a Forcible Entry into a Copyhold (if found) ibid.</p> <p>But it must appear in the Indictment, that he is a Copyholder, &c. (Note, A Widow's Estate is a Copyhold) ibid.</p> <p>For in every such Indictment, the Estate that the Party hath must be shewn, and not suffi- cient to say, Possessionatus fuit, without adunc existit, & adhuc existens, &c. 105</p> <p>Also the Title of the Party must appear, 103</p>
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vants and Furniture thither; R's Servants
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A Lunatick, or one non compos, shall not for-
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Justices can't legally imprison but in the Com-
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Good Behaviour.

A Recognizance for Good Behaviour may
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Number of Attendants, 21

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Or wearing more Weapons than is meet, using terrible Words, or doing Acts tending to a Breach of the Peace, or putting People in dread, Page 219

But a Recognizance of the Peace can't be forfeited without some actual Breach of the Peace by Affray, Battery, &c. ibid.

Yet one by procuring another to break the Peace, forfeits his Recognizance of the Peace, 220

If one has found Sureties of the Peace before the Justices, yet on a new Complaint and Oath, he shall find Sureties again in B. R. but then a Superseas goes to discharge the former Bond, ibid.

Note, Surety of the Peace is discharged by the King's Death, also by Death of the Recognizor or Recognizee, if not forfeited before, 219

One bound to the Peace, threatens another to his Face, that he will kill or beat him, it is a Forfeiture of his Recognizance; otherwise if he threaten, &c. behind his back, unless he also lye in wait, ibid.

Words amounting to a Breach of Behaviour, ought to be such as tend to a Breach of the Peace, 220

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<i>One saying, None of the Justices of Peace but A. nor many Parliament Men do understand the Statutes of Excise, may be bound to the Behaviour,</i>	111, 112
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Hand-Gun.

A Conviction on 33 H. 8. c. 6. for keeping a Hand-Gun, quashed, because it was coram A. & B. duobus Justic. D. R. in Com' præd' conservand', but wanted assign': And also for that it did not appear, that either of them was the next Justice,

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In a Conviction on that Statute, it is not sufficient to say non habuisset 100 l. per Annum; but the Time ought to be certainly expressed, viz that such a Day, &c. (the time of the Offence) he had not 100 l. per Annum,

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In a Conviction on the Statute, 'tis not enough to find his having a Gun in his House, for it may be lent him; and the Statute must be pursued, which says, Use to keep in his House,

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Two Indictments against one Person, one for having a Gun, and the other for shooting, and both quashed, for that the Person's disability was not rightly shewn,

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Headboroughs. Vide Constables.

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Highways.

OF Common Right, all the Country or Parish ought to repair them, except some particular Person be thereto bound by Custom,

Page 115, 116, 117

Many Indictments were severally against divers, because each by himself suffered his Door, &c. to be unrepaired; and it was shewn, that every one (conjunctim) ought to repair; and therefore moved to be quash'd: But the Court refused, without a Certificate that they had repaired,

115

Indictment against the Inhabitants of S. and M. for not repairing, &c. but quashed, because several Parishes, &c.

ibid.

Indictment against the Inhabitants of M. in the Parish of S. and quashed, because M. is but a Hamlet within another Parish, and the whole Parish is to be charged, except Prescription or some special Reason be contra,

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Indictment for not repairing, &c. quashed, because not shewn from what Place to what Place the Way did lead,

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Such an Indictment quashed, because it was not shewn of what Place the Party was an Inhabitant,

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Indictment of Nufance in a Horseway, quashed, because it should have been the King's Highway, or the Highway,

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Street; and yet because not said, For all the
King's Liege People: 'twas quash'd,

Page 118

If a Way lead to a Market, and common for
all Travellers, tho' not the great Road, 'tis
a Highway, ibid.

But if only to a Church, or to a Village, or a private
House, or the Fields, 'tis a private Way, ibid.

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Highway is, ought to repair it, 117, Vide

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Yet one Person alone may be obliged to repair,
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or by reason of incroaching on the Way, which
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Lands of the Church, in the Hands of a Parson,
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Horse-stealers.

B. Lost a Horse, which was after sold in
Smithfield by J. B. by the Name of T. C.
to the Use of A. and toll'd, but there was
no such Person as T. C. here was no altera-
tion of the Property, 119

Hue and Cry.

A Servant being robb'd, the Justice ought
to take his Oath (and not the Master's)
That he did not know any of the Parties;
for

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- for the Master could not know who robb'd, he not being present, Page 120
- If he that is robb'd comes to a Justice to be examined, who refuses, an Action lies against the Justice, because herein he is no Judge of Record, but only a Minister to examine, &c. ibid.
- And therefore a Justice of the County inhabiting the Hundred where the Robbery was, may take the Examination of the Party robbed, when out of the County, 122
- The Robbery must be committed on some Person, and in the Highway, or in the open Fields, and not in a House; it must also be during Day-light, and not in the Night whiles it is dark, 121
- 'Tis not material in what Parish it was, but the Hundred must be certain, 122
- If one be assaulted in one Hundred and flee into another and there robb'd, this last Hundred is only chargeable, 122, 123
- Yet where a Carrier's Horse and Pack was taken in one Hundred, and led into a Wood in another Hundred, and there cut open, &c. this was a Robbery in the first Hundred; but if the Carrier had led the Horse himself, then in the second Hundred, 122
- If a Man come to inhabit in a Hundred after a Robbery committed, he is not chargeable thereto, 123
- If a Constable, on Notice given of a Robbery, refuses to make Hue and Cry, he is indictable, ibid.

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J.

Jurors.

ON Indictments for Murder, Manslaughter, &c. the Prisoner can't plead any special Matter; but the Jury must find it, Pag. 128
And 'tis no good Verdict to say, He kill'd, &c. in his own Defence, but the Jurors must shew how, *ibid.*
But tho' the Jurors find Specially, &c. yet the Prisoner is not to be discharged till pardoned, *ibid.*

If one be indicted for Murder, the Jury may find it Manslaughter, *ibid.*

T. and his Wife and two Sons were indicted, That they Felonice & Burglariter broke a House, and took to the Value of 5000l. The Jury found T. guilty of Burglary, and one of the Sons of Felony, and acquitted the rest. But held they could not find one guilty of Burglary and another of Felony upon one Indictment, and the same Evidence, 129

So in Forcible Entry and Detainer, they can't find the Detainer with Force, and Ignoramus to the Entry, for they ought to find all or none, being on one Indictment, 130

A Prisoner in favorem vitæ, may peremptorily challenge 34 Jurors, without shewing Cause, and as many more as he will, shewing Cause presently. 129

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See the Statute 3 & 4 W. & M. c. 9. where one peremptorily challenging above 20 Jurors, is ousted of Clergy.

And by 10 & 11 W. 3. certain Felons so challenging above 23 Jurors, are ousted of Clergy.

Note, Any one may challenge for the Crown, as well as the King's Counsel, Page 128

And the King may challenge without shewing Cause, till after the Panel is gone through,

129, 130

But all others must shew Cause presently.

Causes of Challenge are, for Favour, &c. viz.

In Information for Forgery, a Juror challenged for that he had lately entertained the Prosecutor,

130

So in an Indictment of Felony, if he that indicted is returned of the Jury, 'tis good Cause of Challenge,

128

So in Indictments of Treason, &c. if one that found the Bill be of the petty Jury. Vide Pr. Cook's Case.

So if one has not Lands or Tenements of 40 s. per Annum in that County where the Party or Criminal is to be tried,

129

An Alien, tho' living here many Years and sworn of the Leet, &c. may be challenged,

126

So may a Juror that has travelled with either Party, and eat and drank, &c. at his Charges,

127

So may one, for that he is Cousin to the Wife of the Defendant, &c.

129

So if one has engaged himself by Oath, Promise, Covenant, &c. to be a Friend or assisting to either Party,

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So if a Juror has been chosen by either Party to be an Arbitrator in the Cause, Page 129

So if after he is returned, and before sworn, he says he will find for such a one, and says this either for Favour to the one, or Hatred to the other of the Parties, 127

Also if a Juror has a Suit at Law or other great Difference against either of the Parties, 127, 128

If one Party challenge a Juror, and the other not; and then be that challenged, release it, the other Party may now well challenge him, 126

Yet where a Juror was not challenged by one Party, who had Cause, but was challenged by the other, who afterwards released the Challenge; the first Party can't now challenge him, for he has slipt his Time, *ibid.*
One was challenged for Favour, and by his Triers found indifferent, he was not admitted to be challenged for another Cause, *ibid.*

Et per Danby, the having found an Issue for the Plaintiff, tho' in the same Cause, no Cause of Challenge. Sed quære.

Justices of Peace.

NOte, Justices of Peace are to meddle only with such Matters wherein some Statute gives them Power; for they have all their Power by Statute, and none by Common Law, 133, Vide 138

And if they don't observe the Forms prescribed by the Statute, their Proceedings are void, &c. 131

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But if a Justice pursues the Words of the Statute, neither the Sessions nor B.R. can alter what he does, Page 132

They can't hold Plea on Penal Statutes, except express Power be given them thereby, 138

A Justice censured, because he refused to go to a House, whereto some Rioters were gone after a Riot, 131

A Justice was fined, &c. for giving a Challenge, 48

Where a Justice does a thing by vertue of his Office, out of the County where he is Justice, 'tis void, 122

But he may take the Examination of Persons obb'd in any County. 120, 122

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A Justice may in Quarrels and petty Trespasses, where the King is not to have a Fine, persuade an Agreement, 131

By 12 R. 2. c. 10. Justices are to have 4 s. a Day, and the Clerk 2 s. a Day, 138

A Justice, being a Judge of Record, may be indicted, &c. for taking Money or any ill Practice, 133, vide 135

See an Information ordered against a Justice for ill Practice, &c. 135, 136

A Justice for compounding and not returning Recognizance to the Sessions, and taking 20 s. of every unlicens'd Alehouse, and converting it to his own Use, was fined 1000 Marks imprisoned during the King's Pleasure, bound to the Behaviour for a Year, and publicly to acknowledge his Offence at the Assises, 136

Justices of Peace are to commit to the County Gaol only, 133, vide 109

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And can't legally commit to the Compter or their
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One cannot prescribe to be a Justice of the Poace,

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One can't be a Justice of Peace that has not
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And one was indicted for taking on him the Of-
fice, not having 40 l. per Annum. *ibid.* &
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Scandalous Words spoken to or of a Justice,
are either indictable or actionable, 135, 137

A Justice is not punishable in Conspiracy for
binding one suspected of Felony over to Ses-
sions, and procuring Evidence, tho' the Par-
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131

Justices can't enquire, try, and determine Ex-
tortion or other Offences, not capital, in one
and the same Day,

132

And when treble Damages are given by a Sta-
tute, the Justices are not to assess the Dama-
ges, but the Jury, and then the Justices are
to treble them,

ibid.

If a new Commission of Peace issues, and is read,
the former is determined, of which all are
bound to take Notice,

ibid.

But if such Commission is directed to such as are
dead, or not in *rerum natura*, the former
continues,

133

And if it be directed to N. pro hac vice only,
yet that determines the former as to those
Matters,

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former Commission as to Felonies, but not as to the Peace, Page 133
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Justices of Peace can't alter an Order made in Sessions, where the Judges are present, 136, 137
For by the Statute, the Sessions are to adjourn Masters of difficulty to the Judges, they having a greater Power, 137
Justices, &c. before 43 Eliz. had no Power touching the Poor; and they have no Power by that Statute to sever or join Parishes for their Relief, ibid.
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They have no Power by the Statute touching Usury, tho' they have for Extortion, 138
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Leather.

A Currier can't buy tann'd Hides, and then curry them, and afterwards sell them; for a Currier can't buy and sell Leather by wholesale,

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Lewdness.

A Custom in London pleaded for a Constable, &c. to arrest and imprison Adulterers, &c. and held well, Page 140, 141
Adultery, a Thing of Temporal Consequence as well as Spiritual, for it is a breach of the Peace, &c. 140, 141

'Tis a greater Crime than entering a Man's House and robbing him, 140

Yet if the Husband kill an Adulterer in the Act, 'tis Manslaughter, 176, vide 147

Fornication and Adultery anciently punishable in the Court-Leet by Fines, &c. 141

One indicted at the Sessions, for being of ill Fame, a Night-walker, and Frequenter of a Bawdy-House, and Judgment against him, *ibid.*

Sir Charles Sedley, indicted for shewing himself naked in a Balcony, fined 2000 Marks, imprison'd without Bail, and bound to the Behaviour for three Years, 142

One indicted, for that Carnaliter cognovit an Infant under Ten, and because 'twas not proved that he entered, &c. found not guilty of the Felony: But having greatly injured her, he was ordered to be indicted of Battery, and thereon found guilty, and committed during the King's Pleasure, fined 200 Marks, and Pillory'd near the Place, and bound to Behaviour for Life, 142, 143

Libels.

Publishing a Libellous Letter on M. to one whom M. intended to marry, held indictable
U

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dictable as well before Justices of Peace, as of Oyer and Terminer, for it tends to a Breach of the Peace, Page 144

- S. *Writ a scandalous Letter to R. (Brother to the Earl of W.) who owed him 300 l. but had got a Protection, and afterwards the King's Bench Prison, saying therein, He would one Day be damn'd, and be in Hell for cheating him; and alledged Scripture to that Purpose; and per Cur. B. R. was fined 40 Marks,* 145
-

M.

Manslaughter.

TWO Men playing at Foils, the Chape of one's Scabbard drop'd of; so that the Sword ran into the other and killed him: This was Manslaughter, and not Chancemedley; for that the Play is unlawful, 146

A. B. and C. were indicted on the Statute of Stabbing, viz. That A. stabb'd, and the two others present, abetting, &c. A. was hang'd, and B. and C. respited, had Clergy, because the Statute being Penal shall not be extended by Common Law, 146, 147

Where one killing another in the Act of Adultery with his Wife, it shall be Murder or Manslaughter, 147, 176

A Man cocking a Pistol, which he thought not charged, it went off and killed his Wife: this was held Manslaughter and not Misad-

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venture. It seems what he did to the Pistol was unlawful, Page 147, 148
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Market-Overt.

A Sale in Market-Overt binds not him who has Right to the Goods, if it be by Fraud, or the Buyer has Notice, that the Property is another's, 149
Foreshops in London are Markets-Overt only for such Things as concern the Owner's Trade, and therefore by a Sale of stolen Plate, in a Scrivener's Shop, the Property was not altered, *ibid.*

Nor is it altered by a Sale in a Goldsmith's Back-shop. For it must be in an open Shop, where every one that passes may see what is done, *ibid.*
Sale to a Pawn-broker, tho' in his Shop, alters not the Property. For 'tis no Market-Overt, *ibid.*

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Restitution.

Murder.

Justices of Peace may enquire of Murder, and several Indictments of Murder have been before them, 150, vide 134
But they can't take any Inquisition out of the County for which they are Justices, 134
Killing a Felon who will not be arrested, or afterwards makes his Escape, is not Murder, 150

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So if a Gaoler kills his Prisoner, who attempting his Escape endeavours to kill him, P. 150

So the killing of Persons who attempt to rob, or murder, or break Houses, or commit Burglary, for in neither of these Cases is it Felony to kill, nor doth the Killer forfeit any thing,

150, 151

If Bailiffs endeavouring to arrest, attempt to break into a House lock'd, and the Party, or his Son, or Servants shoot and kill, this is not Murder, but 'tis Manslaughter,

151

Killing Se defendendo will not excuse, but in Cases of inevitable necessity, as flying to the Wall, or so that he can fly no further, as where one falls to the Ground, &c. and in such Case 'tis not material who struck first, except Malice were before,

151, 152

If two play at Sword and Buckler, as by Consent, (without the King's Command,) and one is killed, 'tis Felony,

152

But if A. wrestles with B. by Consent, and gives him such a Fall that he dies, this is not Felony. And 'tis said if a Man flings a Stone over a House and kills another, this is not Felony (but quære) Yet in both Cases the Goods of the Killer are forfeited,

ibid.

A. and B. are fighting, and C. coming to part them, is killed, 'tis Murder,

ibid.

But the Rule that leads all these Cases is, where the Act is lawful, and Death ensues, there 'tis Homicide by Misadventure; but where the Act was not lawful, but done without Malice, there 'tis Manslaughter; but if done

done

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done with, Malice, 'tis Murder Page 152.

Vide 161

For Manslaughter is a killing without Malice prepenſe. But Murder is the killing a Man with Malice prepenſe. And all wilfull killing by poiſon implies Malice and is Murder,

Vide 152, 153

Altho' another be poiſoned, and not the Perſon intended,

154, 155

Alſo, if a violent and cruel Act be done voluntarily, the Law does imply Malice prepenſe,

174, 171, 172

If a Servant or Apprentice with Malice, kill their Maſter or Miſtreſs, or a Woman her Husband, it is Petty Treason, tho' but of 12 or 13 Years old,

156, 162

A Servant conſpires with J. S. to rob his Miſtreſs, and being conveyed into the Houſe by Night, kills the Miſtreſs; Murder in J. S. and Petty Treason in the Servant,

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So a Woman having two Daughters by her Husband, and afterwards living in Adultery with another Man; She, by the Advice of the Adulterer, ſent by one of her Daughters a Poiſon in Powder to her Husband, pretending it good for a Cold; the Husband being poiſoned therewith,

154, 155

*An Infant under the Age of nine Years killed another of that Age; this was Murder, be-
cause Malice appeared. Yet one of no Dis-
cretion can't commit Felony or Murder, but
may Treason,*

156

*And one non Compos ſhall not loſe his Life,
nor forfeit any thing for Murder or Felony,*

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If Twenty come with Intent to kill a Man, and one kills him, 'tis Murder in all, Page 158

If a Conspiracy be to kill A. but in the Attempt only his Servant is killed, yet 'tis Murder, ibid.

But if A. go with Malice to fight B. and to kill him, and C. on a sudden takes the Part of A. and they kill B. 'tis Murder in A. and but Manslaughter in C. 158. Vide 162, 163

If two are fighting, and others looking on, do not endeavour to part them, they may be indicted and fined, if one be killed, 161

If one provokes another, out of Malice, to fight, or sends a Challenge, &c. tho' the Challenger be killed, 'tis Murder, ibid.

But if after the first Difference they are reconciled, and then happen to fall out suddenly, 'tis but Manslaughter, ibid.

For such Acts as arise upon a sudden Passion, can't be said to be malicious; and therefore where a Man finding his Son beaten, ran a Mile to beat the other Boy and killed him, yet only Manslaughter, 163, 168

But if there was Time to allay the Passion, and the Malice continues, 'tis Murder, 168.

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No Words of Reproach or Infamy, or any affronting Gestures, will excuse Murder or lessen the Guilt, 165, 164, 174, 175

See the Case of a Welshman affronted about his Leek, and flinging a Hammer, killed a third Person, 162

Also what will excuse, or not excuse in Homicide, and what Acts will justify or not, see

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*see the Argument of Holt, Chief Justice,
from Page 172 to 176*

- A Master on the cross Answer of his Servant,
struck him with a hot Iron and killed him,
Murder, 171, 172*
- A Woman kick'd her Child, and stamp'd upon
its Belly with her Foot, Murder, 172*
- So if a Master excessively corrects his Servant,
or a School-Master his Scholar, 152*
- A Man beats a Woman with Child, so that
the Child is born with bruises on its Body, and
afterwards died thereof. Murder, 162*
- If one feloniously wounds another, who neglects
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is Murder, 168*
- In Murder, if the Husband and Wife join, both
are guilty (So in Treason) 169*
- If there be an Intent in a Woman to conceal the
Birth of her Bastard-Child, tho' dead-born,
'tis Murder, ibid.*
- But if she confess herself with Child, or makes
Provision, or calls for help, 'tis otherwise,
ibid.*
- If an Officer or other Person kill one in preserv-
ing the Peace, or a Parent or Master his
Child, or Servant or Scholar, by Chastise-
ment or Correction; 'tis enquirable whether
it was not done wilfully, on pretence to pre-
serve the publick Peace: And as to a Ma-
ster or Parent, whether it was besides his In-
tent or Purpose, ibid.*
- For some Circumstances may make such Cor-
rection Murder, as in the Cases supra, 168*

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*A Bailiff in arresting J. S. was killed by him,
&c. Murder in all present and assisting
J. S.* Page 166, 167

*But if there be a Misnomer in the Warrant,
and the Bailiff endeavouring to arrest is kil-
led, 'tis not Murder,* Vide 166

*The Reason seems, for that when any Person is
unjustly assaulted or restrained of his Liberty,
any other may attempt his Rescue, and kill
those that so restrain him. Vide 176, tho' 157,
and 171 seem contra, but I think not Law.*

*Several agree to do an unlawful Act, as to
hunt in a Park, &c. and in pursuit thereof
one of them kills a Man, all are guilty, tho'
half a Mile distant, 155. Vide 160, 165*

*See the Case of the Keeper who tied a Boy to a
Horse's Tail, which running away killed him,
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*One seizing an Enemy's Goods at Sea, carried
them to his House, a Stranger pretending to be
Deputy-Admiral, comes thither with many
People, and assaults the Gate, and a Gentle-
man in going out was killed by one of them.*

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*Several came to another's Chamber, and en-
deavoured to keep him there till they sent for
a Bailiff to arrest him, and he with a Dag-
ger stabs one of them, and this adjudged
Murder at Common Law, but not within
the Statute of Stabbing,* 157. Quære.

*Adjudged that the having a Cudgel in one's
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tute,* 164

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ster of the Rolls, and offering 100l. to*

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J. S. to do it, &c. This, tho' but an Intent, was held indictable, and he was fined 1000 Marks, imprisoned for three Months, and bound to Behaviour during Life, Page 167
Note, One may be indicted for the Murder of a Man unknown, 163
 The Sentence in Murder can't be altered, but the Body is at the King's Pleasure, *ibid.*
 And when one is condemn'd to be hang'd, if the Sheriff execute him in another Manner, it is Felony in the Sheriff, 151
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N.

Nusance.

THE mere erecting a Dovehouse, if no Doves kept in it, is no Nusance: Quære, for it has been several Times adjudged pro & contra, 177

O

Overseers of the Poor.

THE Churchwarden of H. committed by the next Justices, as Churchwarden, without Bail, for refusing to give Account of Moneys received, &c. but discharged, because

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cause the Justices have no Power over him as Churchwarden, but quatenus Overseer of the Poor, which tho' by 43 El. it is annex'd to the Person of the Churchwarden, yet they remain distinct Offices in him, Page 178

P.

Papists and Recusants.

ON an Indictment for a Recusant convict's going above five Miles from his Abode, 'twas held, That by the Statute, a Licence for going above five Miles, &c. ought to be by four Justices, and the Deputy Lieutenant, under Hand and Seal, and the Deputy's Assent is to be by it self, 179

Also 'tis not sufficient to say, 'Twas for urgent Business; but the particular Business must be shewn, ibid.

A Recusant being indicted, brings into Court a Testimonial of his Submission, according to 35 El. and notwithstanding made another submission on his Knees in Court, 180

If any pretend to have Power to absolve any from their Allegiance, or do perswade them from their Obedience, &c. it is Treason, tho' none was moved (or absolved) thereby, ib.

Also if any move another to decline from his Obedience, or to promise Obedience to any pretended Authority, &c. tho' he did not pretend to have Power from Rome, yet Treason within 22 El. c. 1. ibid.

A

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*A Popish Recusant may conform at the Sessions,
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Perjury.

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One may be indicted for Perjury in making a
false Affidavit by the Common Law, but
not upon the Stat. 5 El. c. 9. ibid.

But making a false Affidavit before a Master
in Chancery, was ruled no Perjury, because
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One took an Oath in the Court of Requests, in a
Cause there depending touching Freehold, and
was prosecuted for Perjury; but because the
Court had no Jurisdiction touching Freeholds,
'twas held no Perjury, ibid.

One indicted on the said Statute 5 El. for Per-
jury, on a Commission for examining Witnesses
in Chancery, but quash'd. 1. The Commis-
sion was not shewn to be under the Great
Seal, for if not, the Commissioners had no
Power to take an Oath. And 2. The In-
dictment recited the Statute, and shews
wherein the Oath was false, but not what
the Issue in Chancery was; so that it did not
appear, whether what was sworn was ma-
terial to maintain the Issue, 181

One indicted on the Statute, because on a Trial
in an Information for the King, he swore,
&c. (setting out the Oath and its falsity) but
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R. indicted on the said Statute for Perjury, supposed in his Answer in the Star-Chamber, and in his Examination on Interrogatories there: But because not said examined as a Witness, nor in perpetuam rei memoriam, discharged, Page 183

So L. F. indicted thereon, for giving false Evidence to the Grand-Jury at W. Sessions, in an Indictment for a Riot, was discharged, for that the Statute provides against such as commit Perjury, by his or their Deposition in any of the Courts abovesaid (in matters there depending, by Bill, Writ, Action, or Information) or being examined in perpetuam rei memoriam, neither of which was here. See the Stat. so explained, 182

Also such an Indictment at K. was quashed, 1st. Not shewing in what County K. is.

2d. Not expressing how he was perjured, 184

Another quash'd, it not appearing that any of the Justices, before whom taken, were of the Quorum, ibid.

Another quash'd, because it says the Oath was taken before Baron A. and Serjeant T. but says not whether at the Assizes or Sessions, ibid.

Another discharged, because it was tacto per se sacro Evangelio depofuit, &c. but not directly alledged that he was sworn, ibid.

And another discharged, because laid to be falso & Corruptive, but not voluntarie, 185

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AN Indictment on 23 El. c. 10. for taking Partridges cum Retiis & aliis, &c. and quash'd, because there is no such Word as Retiis, Page 186

Note, Proceedings upon this Statute may be either at the Sessions by Indictment, or before a Justice by Examination of Witnesses; but the Justice can only take the Examination, and bind over to the next Sessions, *ibid.*

Poors Settlements. &c.

BEfore 43 El. c. 2. no Power was in the Justices nor Constables concerning the Poor, &c. 137

A Vill, tho' annex'd to a Parish, yet having its Parochial Rights, and Churchwardens separate, is a separate Parish within 43 El. and to maintain its Poor separately, and so is a Parish in Reputation only, 187

How a poor Bastard is to be settled. Vide 187, and Title Bastardy.

A Person marrying the Grand-mother of a poor Child, is liable to maintain it, viz. if he has an Estate by her, tho' it descends after Marriage, 188, v. 195, 196

An Inhabitant of M. had several Children there; his Wife dying, he married another who had an Estate in H. He leaves M. and with his Children, &c. lives at H. above a Year, and after returns to M. lived there two Years, was rated to the Poor, &c. But *he*

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he dying, his Widow and Children were removed by two Justices to H. but on Appeal are declared Inhabitants of M. Page 188
But this Order of Sessions was quash'd in B. R. on pretence of Want of Notice; and on citing a Case, which I take not to the Purpose,

189

And in the following Case it is held, That coming into a Parish publickly, by taking a House and being rated to the Poor, &c. is a sufficient Notice within the Statute, ibid.
The Churchwardens certified under their Hands, that A. was an Inhabitant within their Parish; yet for that no Note was left with them according to the Statute; adjudged no Inhabitant,

ibid.

Yet see the Case, 192, 193, where such a Certificate was held an Estoppel, and conclusive on the Parish that gave it: So if an Order of two Justices be affirmed, &c. on an Appeal, and hearing the Merits of the Case,

193, vide 196

And if the Parish who are to appeal do it not in Time, 'tis conclusive to all Places, except an After-Settlement can be found,

190

The paying parochial Taxes, as Poors Rates, &c. gains a Settlement; yet Scavengers Rates does not, Quære,

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Where the Father has no Settlement, there the Birth of the Child gives it a Settlement: But if the Father has a known Settlement, his Settlement is also the Child's, whether Legitimate or not,

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Poor

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Poor Children are to be kept where born, and not where the Parents die in transitu. Vide the Reason, Page 193, 194.

If a Woman with Child be sent to the House of Correction, and is there delivered, the Child is to be sent to the Parish from whence the Mother was sent, that being her last Settlement, 194

An Order for Parents to relieve their poor Children, quash'd, because it appeared the Justices at the Sessions did not make it, but had appointed other Justices to do it; for they can't transfer their Authority, 195

An Order for Removal quash'd, it being only said, lately settled, and not last legally settled, 196

Another quash'd, because not appearing to be made upon Complaint of the Overseers, &c. 190, 191

And 'tis usual to quash such Orders, when there is no direct Adjudication, as where it is only by way of Recital, &c. 190

A Servant was hired from Midsummer to Michaelmas, and then to Lady-day, and thence to Michaelmas following. This was held no good Service to gain a Settlement within 8 & 9 W. 3. c. 30. 191, 192

And yet where the hiring was from Lady day to Michaelmas, and thence to Michaelmas following, tho' he did not serve much above half of the last Term, held a good Settlement, 191

A Servant hired for a Year at B. fell sick, there her Master turned her away, and in passing thence to H. where born, begged Relief, 191

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lief, and thereupon sent as a Vagrant to H. who sends her back to B. then B. procured an Order of Sessions to settle her at H. And on a Certiorari it was held, her Settlement was where hired, and not where born. Nota,

195, 225

If the Sessions order a Parish to provide a House, or to give any Person Means to live on, who is not impotent, or hath an Estate, &c. such Order is void,

194

The House of Correction is properly for the Poor of a Parish who refuse to work, where they are to be whipped and set to work, *ibid.*

See the Case of a poor Child born in the House of Correction, *ibid.*

See also Vagabonds.

POORS TAXES.

P*arsons are to be charged to the Poor, and to the Highways, and all Taxes allowed by Act of Parliament,* 197, & vide 118

A Farmer is not to be taxed to the Poor for his necessary Stock, according to the Land he holds: But if he hath a superabundant Stock, i. e. more than the Land requires, he shall be tax'd for that, 202

Yet it is queried if a Farmer is to pay a Rate or Tax for Stock upon the Land, Vide 200,

201, 202

A Shop-keeper shall be charged to the Poors Rate for the Goods, &c. in his Shop, 200

Assessments for the Poor are to be according to Mens visible Estates, real and personal, in the

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the Place where they inhabit, and not with regard to what they have in other Places. and the Occupiers of Lands within any Town or Parish, are only to be tax'd to the Poor, and not the Lessors or Owners, Pa. 199, 200

In a City, where one Parish is not of Ability to relieve their Poor, the next Parish being able, are to aid them by a weekly Allowance. But when the Cause does cease, such Allowance is to cease also, &c. 199

Note, By the Stat. 23 Eliz. c. 2. if a Parish be unable to provide for its Poor, Justices of Peace are obliged to tax the neighbouring Parish; and held, they might impose the Charge upon any of the Inhabitants of such neighbouring Parish, the Words being, (any other of any other such Parish) 197

The Case of St. Buttolph's Parish, lying part in London and part in Middlesex, and hath one Churchwarden, but several Overseers, and the Parish Rates several, and hath accounted to the Justices of each County distinctly, Time out of Mind; therefore held that each Division should be esteemed a distinct Parish, and maintain its own Poor, 197, 198

The Sessions in London ordered, That J. M. should maintain his Daughter, and allow 20 d. a Week to maintain her; but quash'd, because it did not appear she was sick, impotent or unable to Work, and so not within the Statute 43 El. 199

*See divers Orders, &c. for Parents and Grandfathers to maintain poor Children, &c. ante in **Poor's Settlements.** And Vide **Overseers,** ante.*

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Principal. Vide Accessary.

R.

Rape.

THE Husband may prosecute for a Rape on his Wife, tho' she be dead, or tho' divorced causa frigiditatis, Page 203

Rates. Vide Poors Taxes.

Recognizance.

THE King cannot take a Recognizance; for he cannot be a Judge, but ought to have Judges under him (sworn to administer Justice indifferently both to himself and People,) 204

None can take a Recognizance but a Judge of Record, or by Commission; as the Judges of both Benches, Justices of Peace and the like, *ibid.*

Constables or Conservators of the Peace by the Common Law, cannot take Surety for the Peace by Recognizance, but by Obligation they may, *ibid.*

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Restitution.

W Here a Restitution of stolen Goods shall be to the Owner that prosecutes, notwithstanding a Sale in Market-Overt, Vide Kelynge, 35, 48, & 50, & hic, Page 205 And if the Thief is taken, and the Money seized for which they were sold, that shall be restored to the Owner of the Goods, 205

Regrators, Forestallers, &c.

SALT is a Victual, and is within 5 & 6 Ed. 6. c. 14. being necessary for the Food and Health of Man, and seasons and renders wholsom Beef, Pork, Butter, Cheese, &c. But Apples are not Victual within that Statute, 206

A Fishmonger may be indicted, &c. for ingrossing and selling Salmons, *ibid.*

One inform'd against for forestalling, confessed the Fact, but prayed the Court to mitigate the Fine, who took this Difference; If the Statute ascertains a Sum for the Delinquent to pay, and does not refer it to the discretion of the Court, they cannot mitigate: But if the Statute does not prescribe a certain Sum, but says it shall be double the value of the Thing, or the like, (as here) there they may mitigate it, 207

An Information for ingrossing Butter and Cheese set forth the quantity and value of each, but not the double value; and held 'twas sufficient to demand the value in general, without

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- mentioning any Sum ; for the Jury are to inquire of the value. Also the Informer demanded his own Moiety. but said nothing of the King's, yet held well, Page 208
- One indicted for forestalling Butter. Exception, It does not appear to be at the Quarter-Sessions, but only at the General-Sessions; but held, it shall be intended the Quarter-Sessions, 209
- H. indicted for forestalling Lead, but quashed, because it did not appear that he bought it as it was carrying to Market to be sold, *ibid.*
- An Information for ingrossing divers heaps of Corn, (or of Hay, or Straw) not good: Neither the Quantity nor Value being shewn: Had it said, of such a Value, it had been good, 207
- An Indictment for ingrossing a great quantity of Hay, and Straw, not saying how many Loads (nor the value) of each, and therefore quashed, 209, 210
- An Information against a Grocer for ingrossing 400 Quarters of Wheat: On not guilty pleaded, the Jury found the Statute *supra*, and as to 380 Quarters not guilty; and as to the other, that he was a Starch maker, and made it into Starch; and Judgment was against the King and Informer. For that buying Wheat to convert it into Starch, is not within the Statute, 208
- In an Information on the said Stat. for buying Seed-Corn, having sufficient of his own, and not bringing so much to Market of his own Corn: 'Twas held, That a Contract in Market for Corn not in the Market, or not there that Day, is not within the Statute: But if

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if Corn, &c. be in the Market, (tho' the Contract be in a House, &c. out of the Market) and delivered to the Buyer out of the Market; yet it is within the Stat. Pag. 209 And 'twas said, the Market is only that Place of the Town, &c. where it is usually kept, ibid.

An Indictment against divers for conspiring to raise the price of Corn: Quash'd, because they were named only Millers, without the Addition of any Place, 210

Note, If one has a Licence for Forestalling, &c. on the said Statute 5 & 6 Ed. 6. he need only recite that Statute in his Pleadings, without pleading the 13 Eliz. c. 25. for the Licence is grounded on the former Statute, and the later only qualifies the Person, 208, 209

Riots, Routs, &c,

A Riot is, where three or more do an unlawful Act, as beat a Man, enter on one's Possession, &c. An unlawful Assembly is, where divers People meet to do some unlawful Act, but do it not. But if after they are met they go forward, towards putting the same in Execution; whether they do it or not, 'tis a Rout, 212

Tho' one Justice alone can't make enquiry of a Riot, Rout, or unlawful Assembly, nor award Proceſs thereon, &c. yet he alone, with his Servants, may go to the Place, and if he find any riotously assembled, he ought to arrest them to find Sureties for the Good Behaviour, 211

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He is to disarm them and keep them in Custody 'till they are cool, and may commit them to Prison for want of Sureties; And if he comes to a Place where it is likely there will be a Riot, &c. he may leave his Servants there to restrain it, and to arrest the Parties to find Sureties. And if he hears of a Riot, &c. when he is sick, he may send his Servants to suppress it, or to bring the Rioters before him or some other Justice, to find Sureties, &c. And if any are about to commit a Riot in his Presence, he may by Word only, without Warrant in Writing, command his own Servants (as also Constables, &c.) to apprehend them, And the Servants, (Constables, &c.) may justify their Apprehension by such verbal Order, tho' they are fled out of the Justice's Presence, Page 211, 212

Note, The Statute 2 H. 5. c. 8. (reciting that 13 H. 4. c. 7.) confirms the Penalty of 100 l. on every Justice of Peace, Sheriff, Under-Sheriff, &c. who shall not do their Duty in suppressing Riots, Routs or unlawful Assemblies.

But if the Justices, &c. have no Notice of the Riot, &c. they do not incur the Penalty, except it be some great and notorious Rout, of which all Persons in the Neighbourhood are presumed to have Notice, 212

And the Month for the Justices inquiry on those Statutes is not to be confined to 28 Days, but the Almanack Month, because not a Penal Law, but only directory for punishing an Offence at Common Law, 212. Vide 213

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J. and S. and others, were convicted of a Riot on 13 H. 4. c. 7. upon the View of two Justices and the Sheriff of the County; and were fined by the Justices, viz. J. 20 l. and the rest 5 l. a piece. And because the Sheriff did not join in fining them, Judgment was reversed: For the Statute says, He is to be joined in the whole Proceedings. P. 313

H. and two others being indicted, for that they riotously assembled, and made a Rescous; one was acquitted, and the other two found guilty; and because two can't make a Riot, the Judgment was held naught, 212

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Robbery.

ONE robb'd another of 49 s. on the Highway, and ruled to be no Robbery, unless found that the Person was put in fear, 214

Yet if a Servant be robb'd of his Master's Goods in Sight of the Master, tho' at a distance, this is a robbing of the Master, *ibid.*

And if one cast away his Goods or his Purse to save them from a Robber, who comes and takes them up and carries them away, this is a Robbery done to his Person, *ibid.*

A distinction between Robbery in a House and mere Larceny, viz. Larceny is only a fraudulent taking without actual Force; but a Robbery is a taking with Force: And see also the distinction between Burglary and Felony, &c. 215

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And such Force, which makes Robbery in a House, may be either an actual Breaking of the House, or an Assault on the Person,

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See the Case of a Servant of an Alehouse-keeper combining with two Men to rob her Mistress, of Money kept in a Trunk, two pair of Stairs; They came to the House to drink, and found fault with all the Rooms below, so were had up two pair of Stairs, where they broke the Trunk, and took away 60 l. This was held only Felony, and no breaking of the House; contra, if they had broke open any Chamber-Door, or any Cupboard, &c. fix'd to the Freehold,

215

So two came by Night to a Tavern to drink, where they stole a Silver Cup they drunk out of, tho' the Owner and Family were then in the House; yet this was held no Burglary, but Felony without Clergy.

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Note, Baines's Case in Kelynge 68, is contra, Vide Felonies, ante.

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Scolding.

TO make Scolding a Crime indictable, there must be several repeated Instances, for they must be Common Scolds, Page 217
Yet in an Indictment against two for scolding, 'twas moved to quash it, because the scolding of one can't be of the other; and that the Crime it self can't be joint; but the Court would not quash it, and put the Defendants to demur, *ibid.*

Silk-Throwers.

THE Mayor of London on a Certiorari returned, that by virtue of 13 & 14 Car, 2. ca. 15. for regulating the Trade of Silk-Throwing, he had convicted B. for buying, Silk of the Winder, upon the Oath of the Seller, and adjudged B. to pay the Value to the Owner with his Charges, 'Twas excepted, 1. That the Seller was particeps Criminis, and so no competent Witness. 2. That Judgment ought to be given against the Seller: For by the Act he is an Offender also. But both disallowed, 218

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T.

Taxes. Vide **Poor's Taxes.**

Trial.

THE Lord S, in Middlesex procured R. C. to kill J. T. and R. C. with J. J. kill J. T. in London. They were both tried as Principals in Term Time in London, and convicted, and the Lord S. as Accessary was tried, &c. in B. R. at Westminster, on the Statute, 23 Ed. 8. c. 24. Pag. 222

If one be feloniously struck or poisoned in one County and dies in another, the Indictment and Trial must be where the Death happens. But if the Acts which make up a Felony be committed in two Counties, that is not help'd by any Statute. Quære, *ibid.*

A Man steals Goods in one County, and flies with them into another, he may be indicted and tried in either County, *ibid.*

Justices of Peace can't indict, or hear and determine the same Day, unless by Consent of Parties, or in capital Cases, where the Offender is in Custody, 223

But Justices of Oyer and Terminer, as well as of Gaol-Delivery, may try any Indictment the same Day, tho' without Consent of Parties, *ibid.*

In Error on an Indictment of Barratry. Exception. 1. That he ought not to have been tried the same Sessions as indicted; but disallowed;

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lowed; for the Party being present, may as well be tried the same Day as at another Time. 2. That after the Conviction he was instantly fined 40 l. and committed quousque: But held, the Justices may well fine and imprison immediately after Conviction, P. 203

If one (having committed Burglary and stole the Goods of several Men) be indicted for that Burglary, and stealing the Goods of one of them, and acquitted, he cannot be afterwards tried for the Burglary; but he may of Felony, for stealing the Goods of the others, 224

Vide also Felony.

Vagabonds, Rogues, Wanderers, &c.

A Rogue is not to be sent to the House of Correction, but is to be whip'd, and so sent where last settled, if that may be known, if not, to the Place of his Birth, 225

A Woman wanders with her Child, under seven Years, and dies, the Child is to be passed to the Place of its Birth, but not as a Vagabond, &c. also a Child under seven Years can't be a Wanderer, ibid.

J. H. indicted, for that being an Inhabitant in B. in Com. M. he at H. and other Places in the same County, carrying about Wares to sell in private Houses, &c. and was adjudged a Vagabond, 225, 226

See the Case of two vagrant Women, who coming to S. in Com. B. one of them was there delivered of a Child, and they going thence

The TABLE.

thence to C. in Com. G. the Mother left the Child there and ran away: The two neighbouring Justices, on Complaint, and Examination of the other Woman, remove the Child to S. where born; and tho' objected, it should have been to the Place of the Mother's Settlement, the Father being unknown; yet the Order was confirmed, for that this was a Settlement by Birth, 'till the Parent's Place of Settlement could be known. See other Exceptions there. to also over-ruled, Page 226, 227
 See also the Case of a sick Servant turn'd out of Doors by her Master, and wandering, &c. 135, 225
 And Vide Tit. *Dooz's Settlements*.

W.

Wages.

THE greatest part of Justices resident within the County, are to be present at rating of Servants Wages, else 'tis all void, 228
 They are also to call to them some other grave Men of the County, &c. for so the Statute requires; and they are to confer together and consider of the Plenty and Scarcity, and other Circumstances, 228
 And the Justices are to certify those Rates into Chancery within six Months after Easter, on Penalty of 10l. upon every Justice that is absent, ibid.
Note

The TABLE.

Note, Divers Orders made by Justices for Payment of Servants Wages, were quashed, because it did not appear they were Servants in Husbandry; For the Justices Power to order Payment of Wages, seems only in Cases of Husbandry, and not Day-Labourers, Gardiners, &c. Page 228, 229

And therefore the Order for Mr. D. to pay his Coachman's Wages, was quashed, *ibid.*

Ways. Vide Highways.

Warrants.

A Justice's Warrant, to answer such Things as shall be objected against the Party, without alledging any Cause in particular, is good: But he cannot commit to Prison without alledging the Cause particularly, 230
Justices of Peace are to elect Constables of Hundreds and High Constables, and these are removeable by them if Cause: But if it be in a Manor, the Constable is chosen and sworn in the Leet, and the Justices have no Power to displace him, nor can they elect a Petty Constable, *ibid.*

And Vide Tit. Constable.

Watch and Ward.

A Constable may imprison in the Stocks, an Inhabitant of a Town, who in his Turn refuses to watch and ward, 231
But

The TABLE.

But he must be an Inhabitant, and the Constable cannot appoint a Stranger to watch, &c.

Page 231

An Order in B. R. That as well in Winter as in Summer, Watch and Ward should be every Night in every Street throughout Westminster and Suburbs of London; and directed their Order to the Justices and Sheriff, and ordered a Rate to be made for the Inhabitants to contribute thereto,

ibid.

Witchcraft.

A *Indicted at the Sessions for Felony and Witchcraft at S. and several Exceptions,*

1. That the Caption was in pena Sessione for plena: But held well if plena were left out. 2. That it was not taken before Justices, ad pacem tenend' in villa præd. and so might have no Power to find the Indictment of a Fact there; but over-ruled. 3. It was too general, being only, that the Defendant practicavit diabolicas Artes, and does not express to what Intent: But answered, The employing of wicked Spirits to any Intent is Felony within the Statute; and the Intent why they were employed is well expressed in another part of the Indictment, and if an Indictment fail in one Part it may be good in another, and the Indictment held good, 232.
Yet Dr. Lamb's Indictment being (quod exerceat, &c. quasdam malas & execrabiles & diabolicas Artes) Anglice, Witchcraft, was quashed, only because there was no proper Latine Word for Witchcraft,

233

F I N I S.

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ERRATA.

PAGE 79. for 12 *l.* read 12 *d.* in several Places.
Pa. 191. l. 10. for *But*, read *And*. Pa. 222.
l. 8. for *Co. Lit.* read *Co. Lib.* and the like in some
other Places.
